THE
MADRAS REVENUE REGISTER.

No. 12.] MADRAS :—THURSDAY, DECEMBER 15, 1870. [Vol. IV.

IRRIGATION FOR SOUTHERN INDIA.

With all due respect for the genius of the great Sir Arthur and his almost equally talented brother, General Frederick Cotton, we beg leave to differ from the manner in which they proceeded to work out their principles of husbanding the water resources of this Presidency. We believe that they made a grand mistake by beginning at the wrong end. They were quite right in advocating the arrest of the rivers of liquid gold that run waste into the sea; but, instead of partially stopping the gentle rivulet in the beginning of its career, and then coming down by a series of gradual and comparatively inexpensive steps, they endeavoured to arrest the swollen and ungovernable torrent by one mighty and superlatively costly work at the very point where the struggle was the fiercest. No doubt they ultimately benefitted the lands on the lowest level; but they left those situated above to continue to suffer the worst evils of natural drought and the want of artificial irrigation. Notwithstanding the great anicuts, or dams, that have been built across the course of some few of our rivers, and which keep back sufficient water for the lands immediately under their influence, it will not be denied that very large volumes still rush over and flow into the sea, which, by a proper system of conservancy, may be preserved for fertilizing the thirsty lands far above the reach of the existing barriers. That the river-borne water can be successfully turned to the development of the hidden resources of India has been fully proved by the genius of the hydraulic engineer whose name we have mentioned. The great works on the Cauvery, Krisna, and Godavery, must convince the most sceptic of the practicability of preventing the waste of water—one of the elements intended by the Creator to be profitably employed for the wants of man. Justice has not been done to the financial results of the irrigation works to which we refer, either by their supporters or their opponents: the former overestimate the revenues derived from them, while the latter denounce them as productive of no good whatever. Of course, as in all such cases of dispute, the truth really lies between the two extremes. One reason for the difficulty experienced in arriving at a correct estimate is to be traced to the fact that the government of the country is mostly carried on by Europeans. The people do not heartily sympathize with their rulers; they have their misgivings, and the consequence is that the ryots are ever apprehensive of their land-tax being increased. They do not tell the truth, or all the truth; the true value of the water conserved and employed is not divulged;

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and, in the great majority of cases where the full use of the water has even been ascertained, the State does not get all that to which it is fairly entitled. The sudden, and often uncalled for, modifications of the revenue settlement have reduced the legitimate profits of Government which ought to be derived from the operation of these works, thus leading to the not unreasonable conclusion that the actual return on the capital invested in the irrigation schemes that have been carried out is much greater than that which is ostensibly realized, and that it is not impossible to secure all that which the State may fairly expect in return for its investment. Our idea is that anicuts should be built across our rivers near their sources, the overflowing waters being caught by similar works on lower levels, as the waters rise over the intervening barriers on their steadfast course to the sea. By these numerous and descending barriers all the higher lands, and then the lower lands, will be successively benefitted, while, from the reduced momentum of the flow, the successive works will be of smaller magnitude and lesser expense than the one stupendous work that is required to arrest a swollen torrent at a point almost where it empties itself into the sea.

We must not, however, cease with scientific works in our endeavour to enrich the soil. It appears to us that the natural agency of the country, the rude and primitive picottah, the engine so well known and used by the ordinary ryot, may be brought into admirable subserviency, in aid and development of our river and channel irrigation schemes. If we look at the map of the Madras Presidency, we find that, not to mention the smaller streams, there are no less than a dozen rivers which carry rich freights of fertilizing material across the country, to be tumbled headlong and profitless into the thirsty ocean. From the Tambrapoorny in the south to the Mahanuddee in the north, volumes of water may be diverted for the service of man, the enriching of the soil, and the maintenance of the State. With the exception of the Cauvery, the Krisna, and the Godavery, scarcely anything has been done to divert, from the ocean, the periodical floods carried almost in parallel lines across the face of the country. The Vypár, the Vigéy, the Velár, the Penár, the Palár, the Sooranamooky, the Pennair, and the Mahanuddee, run almost literally to waste in the mighty bosom of the sea. By means of the gradually descending and comparatively inexpensive barriers we propose, and by channels drawn at right angles to these rivers, there may be a regular net work of irrigation, the blessings of which the rude and primitive picottah is capable of extending to every particle of land enclosed within the meshes of this net. Money invested in such projects would certainly pay a good rate of interest, provided, of course, a judicious selection of localities for the erection of these barriers is made, the cost carefully estimated, and the execution left to the superintendence of the chief Revenue officers of the districts. Anicuts ought to be erected to such a height alone, as just to arrest sufficient water for the levels above, without prejudice to the lands below: the water thus arrested should then be diverted by a canal, if possible, on either side of the anicut; and these canals may be carried to reservoirs, to another river, or may be so continued through the country as to return, if the levels will permit, to the very river from which they sprang. Lands capable of wet cultivation will thus have the means of being brought under cultivation, while elsewhere the water carried along will be equally available for the purpose of being raised for the service of wet or garden produce. The value of water differs with the character and situation of

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the differing localities. It may have to be raised from a great depth, and the soil to be saturated may be very poor; here, necessarily, the price of water must be correspondingly low. Where the water has to be raised from a great depth, but the soil is good, garden cultivation may well be carried on; and the value of water, in that case, will be rated at a higher figure. When, however, water may be obtained at an inconsiderable depth, and the land that uses it is also good, then its value may be taken at the highest reasonable figure. The scale will thus be graduated according to circumstances; and it will be necessary to arrange a classified water-rate beforehand, for the purpose of calculating, with some degree of certainty, the probable returns in revenue. Wherever a project is likely to return at least six per cent upon its cost, it may well be undertaken; but such projects would be of doubtful expediency, as far as the interests of Government are concerned, if the return is likely to be less than six per cent. In carrying out such projects, as implied in our observations above, the Coleroon may be connected with the Velár, the Velár with the Penár, the Penár with the Palár, and the Palár with the Toongabudra and the Krisna, the Krisna with the Godavery, and the Godavery with the Mahanuddee, thus dividing the Peninsula, from Cape Comorin to the northern frontier towards Cuttack, into squares of land whose four sides will consist of tracks of water, readily available for irrigation, which must keep the wolf from the door, or, at all events, reduce to a minimum the evils of those famines that authorities have pronounced to be of periodical recurrence under the fatal influence of certain inevitable workings of the laws of nature.

We are assured that the simple works suggested by us will certainly prove reproductive, and that they may, therefore, be carried out by raising a special loan, Government guaranteeing interest at four per cent per annum. One officer of the Public Works and one of the Revenue Department should be jointly held responsible for the completion of each work in fulfilment of its design and estimate. They will thus in consultation prepare the scheme, execute the work within the estimated amount, fix the water rates upon the several tracts of land, and realize the revenue derivable from them. The numerous failures of similar schemes are entirely attributable to this want of combined action and definite responsibility. One prepares the scheme, another estimates the cost, a third carries out the work, and a fourth, who has nothing to do with any of these officers or their work, fixes the revenue to be derived. Very often they are jealous of one another, and the result is waste of money on all hands with absolute impunity. On the contrary, combined action and a fixed responsibility will ensure proper forethought and eventual success, without waste of money. Projects of this simple kind, aided by the primitive picottah, will give such a stimulus to industry that the term *indolence* will soon become obsolete in India, crime must necessarily decrease, the Government exchequer will fill, public wealth will be multiplied, famines will cease to trouble us, mortality will be reduced, and the sanitation of the country vastly improved. Those that are acquainted with the dry tracts of the Ceded Districts, where irrigation is carried on by picottah-raised water, will not hesitate to believe the practicability of successfully supplementing artificial irrigation by means of this primitive appliance. With a moderate tax, and a judiciously fixed scale of water rates, gardens watered by means of the picottah are known to yield higher profit than the paddy fields of the Garden *par excellence* of Southern India. It is a mistake to suppose that garden lands are invariably of less

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value than irrigated paddy fields. The statistic information on the records of Government will bear us out in this statement. It is a fact, not to be gainsaid, that in many instances, where land has been purchased for public purposes, Government have had to pay heavier prices for picottah-watered gardens than for good wet lands. The officers that have effected the purchases will, if asked, state that the owners of gardens have been more difficult to deal with than the owners of paddy fields, and have been less willing to part with their property. And why? because the picottah has extended the supply and rendered the garden more productive than paddy lands with the ordinary irrigation available. This is a subject well worth the consideration of Government, whose finances are not in a condition to undertake costly projects for the improvement of the land and the prosperity both of State and people.

CORRESPONDENCE.

To the Editor of the Madras Revenue Register.

DEAR SIR,

Adverting to the letter of Tinnevelly *Inquirer*, which appeared in your October issue, and my reply thereto, published in your following issue, I observe that you have rather facetiously remarked, "It is a question whether, under the new Act, Courts are likely to refund excess duty paid in." I think I ought to offer an explanation in order to exonerate Courts acting under the provisions of the new Stamp Act from the imputation indirectly attributed to them by your remark. According to the repealed Stamp law (Act XXVI of 1867), the Courts were *bound* to refund the excess duty paid in if the result of any investigation showed that the estimated value of the property was excessive, however faulty the plaintiff's calculation appeared to be in wantonly overrating the property claimed. Under the new law (Court Fees' Act), the Courts are invested with discretionary power, either to refuse, or to refund, according to the nature of each case, the excess duty paid in. Clause 1, Section 10 of the Court Fees' Act, runs thus, "If, in the result of any such investigation (as provided in Section 9), the Court finds that the net profits, or market value, have, or has, been wrongly estimated, the Court, if the estimation has been excessive, *may, in its discretion*, refund the excess paid as such fee; but, if the estimation has been insufficient, the Court *shall* require the plaintiff to pay so much additional fee as would have been payable had the market value or net profits been rightly estimated. Although it may seem at the first blush that justice is not equally balanced on both sides, yet a little reflection convinces me that the legislature has wisely armed Courts with discretionary power, to use it when they think proper; otherwise the poor defendant would be subjected to unnecessary expense by the plaintiff intentionally overrating the value of the property claimed. What remedy would there be if a plaintiff were to overrate the value of the property fraudulently and intentionally, with a view to harass a poor and helpless defendant? It would be very awkward, indeed, if the representation of the defendant, made at considerable labour and expense, should turn out to the advantage of the plaintiff, even if he succeeds in proving that his opponent has overestimated the property. Under such circumstances, would it be expedient to compel Courts to refund the excess duty, or allow them to use discretionary power? When anything is left to any person to be done according to his discretion, the law intends it must be done with sound judgment and according to law. What is discretion? It is the faculty of discerning between right and wrong, and, therefore, whoever has power to act at discretion, is bound by the rule of reason and law. And, though there be a latitude of discretion given to one, yet he is so far circumscribed that what he does must be necessary and convenient.

I am, Sir,
Your obedient servant,
AN ADVOCATE.

NARRAINDAVERKERRY,
BELLARY DISTRICT,
20*th November* 1870.

COURT FEES' ACT.

To the Editor of the Madras Revenue Register.

DEAR SIR,

With reference to your question (whether, under the Court Fees' Act, VII of 1870, Courts are likely to refund excess duty paid in), appended to Narraindaverkerry *Advocate's* letter, which appeared at page 429 of your November issue, I am of opinion that no such refund will

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be made by the Courts in the absence of any express provision to that effect in the law. Your correspondent has totally forgotten the legal maxim, "*Nova constitutio, futuris formam imponere debet non præteritis*," in expressing his opinion that "the insufficient stamp duty payable in suits filed when Act XXVI of 1867 was in force should be levied according to the provisions of the new Court Fees' Act under the authority vested in the Court by Section 12, and that they could not be levied under Act XXVI of 1867, as it had been repealed when the suits *came on for hearing* and valuation was disputed. The learned *Advocate's* theory appears to have no foundation. Under Chapter 5 of Act VII of 1870, the Court fees should be levied by stamps; and, to ascertain the proper fee leviable on the *institution* of a suit, the table annexed to the first schedule is to be seen. In the title of this table it is distinctly stated that it is the "table of rates of *ad valorem* fees leviable *on the institution* of the suits;" but it is not laid down *anywhere* that the fee should be levied according to the amount of decree. Act XXVI of 1867, which was in force when the suit was *instituted*, was repealed by Section 2, Act VII of 1870, on and after the 1st April 1870, and subsequent to the institution of the suit. Mr. G. F. Wharton, in his observations on Legal Maxims, says, (p. 119), "That an action or "other legal proceeding commenced before the "passing of an Act, in respect of a right of "action accrued before the commencement "of the Act, proceeds as before, notwithstand-"ing that by the Act subsequently passed the "right of action in similar cases be taken "away, or that the proceedings in respect "thereof be changed." The Roman law never suffered a law to have retrospective effect in its operation. Suppose a plaintiff sued for a piece of land, paying 10 Rupees revenue to Government where the settlement is temporary, and valuing it at 80 Rupees, being eight times the revenue, engrossed the plaint on a stamp of 8 Rupees under Act XXVI of 1867, which was in force when the suit was *instituted;* when the case came on for hearing on the 2nd April 1870, Act VII of 1870 had come into operation, and thereupon the defendant raised the objection that the land sued for was valued at 100 Rupees, (for which a stamp of Rupees 7 and Annas 8 is prescribed under Act VII of 1870), will our *Advocate* approve of the plaint, already filed on a stamp of 8 Rupees stamp, being retained on the records as it is, or will he contend that a refund of 8 Annas, being the excess amount under the new law, should be made to the plaintiff? The answer to this question will itself show that our learned *Advocate's* theory is not a sound one.

Yours obediently,

PURGHY.

24th November 1870.

HIGH COURT—MADRAS.

SCOTLAND, C. J., AND KINDERSLEY, J.

Malabar law—Stanom lands—Perpetual lease.

Where A sued to recover certain lands which, having been perpetually leased to his family, had been cleared and improved by them; but which his karnaven had illegally surrendered to the lessor's heir, who contended that stanom lands could not be permanently alienated—

HELD *that, as the lease appeared to be a prudent arrangement for the benefit of the stanom-holder and his successors—it being a benefit that waste lands were reclaimed—such lease was binding on the lessor and his successors.*

S. A. 495 *of* 1869.

Arathil Kandoth Kandappen *v.* Kottayath Keyaka Kovilagatha Sungara Vurma Raja.

THIS was a suit brought to obtain a declaration of title and right to a perpetual lease over ten plots of land, and to recover possession of eight of them and a portion of No. I., and Rupees 807-15-1, with future rent, and interest from date of suit. The plaintiff alleged that the lands were the property of Kudiravatam Brahmaswam, of which defendant, heir of the late Rajah, was owner, and that they had been leased in perpetuity to plaintiff's deceased karnaven in 1824. This lease was executed by the Ellia Rajah, and was renewed by the Mutta Rajah in 1831. Plaintiff further stated that he had cleared the lands which before were waste, and his late karnaven (who had been removed for mismanagement) had illegally made over to defendant possession of the aforesaid eight plots and portion of No. I.

The defendant, heir of the late Rajah, asserted that the deeds sued on were forgeries; that plaintiff's karnaven held on a simple lease, which he cancelled by giving up possession to the lessor, defendant's ancestor, before he had been removed from his office of karnaven; that it was customary for Brahmaswam lands to be entered in the Government accounts in the name of the tenant; and that the Ellia Rajah had no right to alienate Brahmaswam lands. The Principal Sudr Ameen held the latter plea to be a good one, also that plaintiff's alleged documents concerning the lease were not proved. He, therefore, dismissed the plaintiff's suit. The Civil Judge of Tellicherry, Mr. Leman, before whom the case came in appeal, was of opinion that the Principal Sudr Ameen was wrong in finding the lease documents forgeries; if the plaintiff had forged them, why did he increase his difficulties by forging two documents, entailing on himself the trouble of showing that the Ellia Rajah first made the lease, which was afterwards confirmed by the

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Mutta Rajah, and why with the names of deceased people as witnessess, thus weakening his own case? As to the appearance of soot on the cadjans alluded to by the lower Court, Mr. Leman quite failed to find it, nor could he see any reason for smoking them when the cadjans had been taken from the Government Stamp Office the year that they were executed. Then, as to the second ground of the Principal Sudr Ameen's decision, that this alleged perpetual lease was called *jenma koya* and was known as *karomgery* in South Malabar, and that alienations of this sort of tarwad property were not recognized, and, therefore, much less could stanom property be alienated, the Civil Judge failed to find any decision in which this principle had been laid down, and the only one to which his attention had been called was Special Appeal No. 402 of 1857, where the Sudr Court had held that a *jenma kayo* was not a perpetual alienation. Mr. Leman, however, found that stanom lands could be alienated, as was clear from the decree in the appeal suit against which Special Appeal No. 402 of 1857 had been brought. It also was clear that, if such consent were necessary, this alienation had been made with the consent of the Ellia Rajah, who was the only person to be consulted, and the Mutta Rajah ratified what he had done. The alienation was not damaging to the *stanom*, for the land which had been waste was now cultivated, and it was for the benefit of the landlord to get this land under cultivation. Such being Mr. Leman's view of the case, he thought that the plaintiff's karnaven had no power to relinquish the lease, as it was clear that such relinquishment could not have been made for the benefit of his tarwad; he, therefore, found that plaintiff's documents were proved, and that plaintiff was, under them, the lessor of defendant's lands, and accordingly decreed for plaintiff as sued for. Defendant appealed to the High Court, on the ground that the perpetual lease granted to plaintiff by the late Rajah was invalid against his successors. Mayne for appellant; O'Sullivan for respondent.

The High Court delivered the following

Judgment:—30th May 1870.

It has not been contested that, if the land in dispute was waste and the lease was a prudent arrangement for the benefit of the stanomholder and those who might succeed him, the lease would be binding. But it has been urged that the Civil Court has not so found, and that there is no evidence in the record to warrant such a finding. We are of opinion that the judgment of the Court must reasonably be understood as amounting to that finding, and there is clearly evidence in the record from which the Court might so decide. Upon this ground strictly we think the appeal must be dismissed with costs.

HOLLOWAY AND INNES, J. J.

Hereditary village offices—Jurisdiction—Act II of 1864, *and Regulation VI of* 1831.

In a suit by a Curnum for dues and emoluments of his office wrongfully withheld by certain ryots, the Principal Sudr Ameen was of opinion that under Section 52, *Act II of* 1864, *the District Munsiff had jurisdiction to try such a claim—*

HELD, *in special appeal, that under Section* 3, *Regulation VI of* 1831, *claims to the possession and enjoyment of the emoluments of village offices were not cognizable by the ordinary Courts of Judicature, but by the Collector, Section* 52 *of Act II of* 1864 *merely providing for the recovery of arrears already ascertained.*

S. A. 605 *of* 1869.

Kalavagunta Chinnamrazu *v.* the Collector of the Kistna District and others.

IT appeared from the plaint that plaintiff, a curnum of an unsettled district, preferred a summary suit before the Collector for the recovery of mirassi emoluments from the ryots. Both parties entered into a razinamah, plaintiff remitting a portion of his claim, and defendants promising to pay the balance within three years from Fusly 1271. Defendants failed in this engagement, and also in the payments due for subsequent fuslies. Plaintiff applied to the Tahsildar, who referred the claim to the Collector; that officer adjudged payment to the plaintiff. The defendant-ryots still refused to pay for the period adjudged, and plaintiff again appealed to the Revenue authorities to recover the sum due by attachment of defendants' property. The Collector now, however, disallowed a portion of the claim, and left plaintiff to recover the balance by his own means. Plaintiff thereon sued the ryots (defendants) for the amount by attaching their property, and included the Collector as a defendant in the suit. The District Munsiff of Masulipatam decreed for plaintiff. From this decision the Collector appealed, on the ground that by Section 3, Regulation VI of 1831, claims to enjoyment of emoluments pertaining to the hereditary office of curnum were not cognizable by the ordinary Courts of Judicature, such as the District Munsiff's Court, and that the Munsiff was incompetent to decide upon the amount of fees due to a village officer. The suit came in appeal before Mr. James Wilkins, on the Principal Sudr Ameen's side of his Court at Masulipatam; he was of opinion that the Regulation quoted by the Collector entirely excluded claims like those of the plaintiff from the cognizance

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of the ordinary Courts, whilst, on the other hand, Section 52, Act II, 1864, prescribed that all such emoluments and dues might be recovered in the same manner as land revenue, namely, through the Collector by the sale of the defaulter's property, or by execution against his person; and, under Section 59 of the same Act, parties aggrieved could apply to the Civil Court for redress. The Principal Sudr Ameen further remarked that, although plaintiff's claim clearly fell within the denomination of dues referred to in Section 52, Act II of 1864, yet it could not be operated upon by that Act unless it had not been otherwise specially provided for. There was, however, no special provision relating to the recovery of emoluments due to village officers in Regulation VI of 1831; that Regulation had been enacted to prevent misappropriation of the emoluments and to maintain the due efficiency of the officers, and it was expressly observed by the Select Committee, in their statement of Objects and Reasons, annexed to the Bill (Act IV of 1864), that the Revenue authorities had no power to settle or enforce payment when the fees due to village officers were withheld, though, by Regulation VI of 1831, they had power to adjudicate upon the claims of persons entitled to receive the fees. It appeared from the Collector's last order that he was of the same opinion. Hence the Principal Sudr Ameen concluded that the present suit was cognizable by the Court of the District Munsiff under Section 59, Act II of 1864, and he could see no reason for disturbing the decree appealed from. From this decree the Collector appealed to the High Court. The Government Pleader for the Collector, the respondent not being represented.

The High Court delivered the following

Judgment :—29th June 1870.

We are of opinion that this suit is barred by the operation of Section 3 of Regulation VI of 1831, as contended by the appellant. That section provides that claims to the possession of, or succession to, hereditary village or other offices, or to the enjoyment of any of the emoluments annexed thereto, shall not be cognizable by the ordinary Courts of Judicature. It is admitted that this is a claim for the emoluments attached to the office of curnum in an unsettled district; but the Principal Sudr Ameen has decided that there is jurisdiction, apparently because Section 52 of Madras Act II of 1864, being needed to effectuate an order passed, the application of that section lets in all the other provisions of the Act, and Section 59 gives this action. Section 52, however, deals only with the mode of recovering the arrears after they have been ascertained, and such recovery, or perhaps failure or refusal to recover, could alone be proceedings under this Act. The complaint here, however, is of the amount of arrears determined by the Collector, and it is obvious that the Regulation in the case of curnums of unsettled districts withdraws this question from the cognizance of the Civil Courts.

The decree of both the lower Courts must be reversed, and the original suit dismissed. As this special appeal was admitted after the time for appealing had expired, we shall not allow the third defendant (the Collector) any costs.

SCOTLAND, C. J., AND INNES, J.

Antecedent lease—Subsequent sale to third party —Purchaser and lessee.

A, having purchased certain land from B and C, sought to eject D, who claimed to remain in possession by a virtue of an antecedent lease from B and C—

HELD *that D's claim was indefeasible, and that B and C could only sell, and A purchase the land, subject to that claim.*

S. A. 378 *of* 1869.

Siddalingappa *v.* Nursingappa.

PLAINTIFF sued to recover possession of certain lands which he claimed, by right of purchase, from the former proprietors (first and second defendants), under a duly registered deed of sale (A) dated 6th September 1865. He further sued for Rupees 150 for loss of produce, owing to third defendant having trespassed upon the land. First and second defendants allowed the suit to go *ex parte*. Third defendant denied the allegations contained in the plaint, and pleaded that the plaintiff had colluded with first and second defendants to deprive him (third defendant) of the land, which he had enjoyed since September 1862, when he obtained it from first and second defendants on a twelve-years' lease. The District Munsiff dismissed the suit on the ground that the deed of sale A. was a collusive document, and upheld the lease bond No. I. Plaintiff appealed to the Civil Court of Bellary. Mr. Irvine, the Civil Judge, found that the first and second defendants (proprietors of the land) had transferred their rights to plaintiff by the deed of sale A.; that defendants did not dispute this; that this absolute sale could not be affected by the temporary occupation of the land under a lease by third defendant; that the lease deed contained a condition that, if third defendant's possession were at any time disturbed, the first and second defendants should make good the loss so incurred by him. On all these grounds the Civil Judge was of opinion that the lease deed No. I. could in no way affect the sale deed A., which gave to plaintiff an absolute right. From this decision the third defendant appealed on the ground, *inter alia*, that the subsequent sale could not affect his right to hold the land for the full term of his lease. Parthasarady Iyengar for

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appellant; Gould for respondent. At the first hearing the High Court referred an issue for trial to the Civil Judge with the following

Judgment:—18th February 1870.

It is clear that the first and second defendants could only sell the land subject to the lease which they had already erected in favour of the third defendant. But, before disposing of this appeal, it is necessary to require the lower Appellate Court to record a distinct finding on the issue, *whether the lease No. I. is genuine. This question was expressly raised in the plaintiff's second ground of appeal to the Civil Court.*

The Civil Judge having returned a finding in the affirmative, the High Court delivered the following final

Judgment:—11th April 1870.

To the issue referred for trial on the 18th February 1870 the Civil Judge has returned a finding that the lease No. I. is genuine. It only remains, therefore, to reverse the decree of the Civil Court, and restore that of the District Munsiff. The third defendant (special appellant) is entitled to his costs in this and the lower Appellate Court.

HIGH COURT—CALCUTTA.

JACKSON, L. S., AND GLOVER, J. J.

Bhuban Chandra Shome (defendant) *v.* Ramdayal Shamanta and others (plaintiffs).*

Special appeal—Objection not taken in the Courts below.

The High Court allowed objections to be taken by a defendant which had not been taken in either of the lower Courts.

Baboo *Bhagabati Charan Bose* and *Ambika Charan Banerjee* for the appellant.

Baboo *Mahendra Lal Mitter* for the respondents.

JACKSON, J.—It appears to me that the decision of the lower Appellate Court in this case cannot be supported with reference to the authorities on the point before us. The suit was for enhancement, and was tried before the Assistant Collector of Burdwan, who, after hearing the evidence on both sides and finding that evidence to be contradictory, ordered an inquiry by an Ameen; and, on the report of that Ameen, made a decree in favour of the plaintiff. The decree made did not confirm precisely the rates claimed by the plaintiff; but took, as it were, a middle course between the allegations of the plaintiff and those of the defendant. The Ameen reported that the land of the village in which the defendant's tenure was situated was divided into four classes, and he found, not precisely in conformity with the whole of the evidence, but upon such part of the evidence as recommended itself to him, that those four classes of land paid certain rates which he stated; and, as the greater portion of the lands of the defendant was found to belong to the second of those classes, he reported that the defendant was liable to pay that rate on that quantity of land, and at that rate; accordingly the decree was given.

The defendant upon this appealed to the Zillah Judge, and the ground that he seems to have taken before the Judge was that the evidence upon which his lands had been found to belong to the second quality or class was not sufficient to support the finding of the Court below. The Judge, however, affirmed the judgment of the lower Court; and, upon review, only modified his own judgment and the judgment of the Court below, so far as to give the defendant a slight allowance in respect of certain lands alleged to have been taken for public purposes.

The defendant comes before us in special appeal, and, for the first time, takes the ground that neither the notice nor the evidence given by the plaintiff complied with the provisions of the law under which enhancement was sought for. That provision was the first clause of Section 17, Act X of 1859, which describes the ground of enhancement as being "that the rate of rent paid by such a ryot "is below the prevailing rate payable by the same "class of ryots for land of a similar description, "and with similar advantages in the places "adjacent." Now, it is not disputed by the plaintiff, respondent before us, that the notice and the evidence fell greatly short of those requirements; and the only question upon which we have had a doubt is, whether the defendant ought to be allowed to prevail upon this ground taken for the first time in special appeal.

No doubt, if the objection referred only to the notice, we should have been inclined to hold that the defendant, by his silence upon this subject in the Court of first instance as well as in the Court of Appeal, and by his going to trial contesting the case upon the evidence, had waived that objection. But nothing can get over the want of evidence, and with some reluctance I find myself compelled to follow the decisions which have been repeatedly given upon this point, namely, that a defect of this kind is fatal to a suit for enhancement.

But I think that, upon consideration, it is not unreasonable that such an objection should prevail. In the first place, we must bear in mind that the suit brought by the plaintiff before us is one of the commonest kind, and that such suits probably form a very large proportion of the whole number of suits brought in Bengal. It is very little, indeed, to ask from a plaintiff, who is seeking, as part of a system, to increase his receipts derivable from his tenants, that he should frame his suit, and also prove his case in exact conformity with the provisions of law, which enable him to increase his profits; and I think there is no hardship at all, so far as he is concerned, in binding him to an exact observance of the law.

Then, as regards the Court, it appears to me that a Court administering a law like Act X of 1859 is bound to satisfy itself that the decrees it

* Special Appeal, No. 219, of 1870, from a decree of the Judge of East Burdwan, dated the 25th August 1869, affirming the decree of the Assistant Collector of that district, dated the 31st March 1869.

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makes are exactly borne out by the provisions of the law.

If the conclusion of the Deputy Collector and of the Judge had been fully and completely stated in this case, it must have amounted to something like the following upon the evidence adduced by the plaintiff and by the defendant, and the word "evidence," of course, includes admission. "I find that the defendant, who holds a certain quantity of land of a particular description, is paying rent at a rate which is below the prevailing rate payable by the same class of ryots for lands of a similar description, and possessing similar advantages in the places adjacent, and, consequently, by the first clause of Section 17, Act X of 1859, he is liable to have his rent enhanced. I find that the measure of enhancement is so much, and consequently I give judgment for the plaintiff at so many rupees and so many annas." That stated fully, I think, would be the conclusion at which the Court would have to arrive before it could give the plaintiff a decree in the present case.

Now, is there anything on the record which would justify the Collector's Court in giving such a decree to the plaintiff? It would appear there is nothing. It is said that the defendant did not dispute these points; but the system of our procedure in this country is not such that, if a defendant fail to dispute or contest any point, he thereby admits it. On the contrary, if the defendant fails altogether to appear and allows judgment to go by default, the plaintiff is bound to prove his case just as much as if the defendant had appeared and denied the claim.

I think, therefore, we are bound to say that the judgment of both the Courts below in this case of enhancement are not in accordance with the law. At the same time it seems to me that the defendant has been extremely remiss in failing to take this ground of objection in any stage of the proceedings below, and, therefore, while I think we ought to reverse the decision of the Deputy Collector and of the Judge, and to order the dismissal of the plaintiff's suit, we ought to do so without making any order as to the costs of this appeal.

GLOVER, J.—I am of the same opinion.—*15th June* 1870.—*Bengal Law Reports, Vol. V., Part XXVII.*

[*Appellate—Civil.*]

BAYLEY AND NORMAN, J. J.

Baboo Tundan Sing (one of the defendants) *v.* Baboo Pukhnarayan Sing and others (plaintiffs).*

Act I of 1845, *Section* 21—*Act XII of* 1841, *Section* 22—*Regulation XI of* 1822—*Purchaser at a revenue sale—Revenue sale—Benami purchase—Manager of a joint Hindoo family.*

A purchase by a managing member of a joint Hindoo family, in his own name, at a revenue sale held under Act I of 1845, *is not affected by Section* 21 *of the Act. A suit by one of the members, for recovery of possession of his share of the property, purchased by the managing member in his own name, but for the use of the family, is not a suit to oust a certified purchaser, and, therefore, not affected by Section* 21, *Act I of* 1845.*

* Regular Appeal, No. 39, of 1869, from a decree of the Judge of Patna, dated the 15th September 1868.

* But see Section 36, Act XI of 1859.

THIS suit was instituted before the District Judge of Patna. The plaintiffs were Pukhnarayan Sing, Kasi Sing, and Tilakdhari Sing.

The defendants were—1, Tundan Sing; 2, Mattru Sing; 3, Lodi Sing; 4, Mahtun, bearer; and 5, Tukan Sing.

The plaintiffs and the first, second, third, and fifth defendants were members of a joint Hindoo family.

The suit was for recovery of possession, after adjudication upon the rights and interest of the parties respectively in their shares in certain estates and house-property in Mouza Mahusa, and for confirmation of possession of certain other estates in Pergunnahs Ghiaspur, Bhimpur, and Pellich, acquired at the time of joint tenancy, from the *ijmali* or joint fund, and the profits of the ancestral property and the ancestral funds. The suit was valued at Rupees 1,69,435-10, including Rupees 1,09,410-1-10, mesne profits, from 1269 to 1274 (1862 to 1867), as per account and boundaries detailed before. The cause of action arose on the 27th Magh 1268 (8th February 1861), the date of separation from common residence.

Much of the property in respect of which the suit was brought had been purchased by the defendant Tundan Sing, as he alleged, after a separation in the family (which he said took place in 1243 (1836) in his own name and out of his own resources, which he had acquired by trading on his own account. The defendant, however, failed to prove the separation set up by him, and it appeared that, although he had been allowed to remain for a long time in sole possession of the property which was the subject of suit, he had, in fact, bought it as managing member for the joint family, and on the family account. Part of the property was bought at sales for arrears of Government revenue under Regulation XI of 1822 before the passing of Act XII of 1841 and part at sales for arrears of Government revenue after the passing of that Act. Tundan Sing's name alone was recorded as that of the certified purchaser, and it was contended, on his behalf, with reference to Act XII of 1841, Section 22, and Act I of 1845, Section 21, that, as he alone appeared to be the certified purchaser, the suit against him ought to be dismissed.

The *Advocate-General* and Mr. *Money* for the appellant.

Mr. *Paul* for the respondents.

NORMAN, J., after going through the facts of the case, commenting on the evidence generally, and observing, "No doubt a strong inference in favour of the defendant arises from the acquiescence of the family in the dispossession for so long a time. But I am not prepared to say that such inference ought to prevail against the evidence on which the Judge has based his decision, especially if we regard the practice in native families of leaving almost all matters in the hands of one and only one acknowledged *karta*, or head of the joint-family," continued—The only remaining question

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was that argued by the Advocate-General as to the property purchased by Tundan Sing in his own name at sales for arrears of Government revenue.

Item No. 1, eight annas of Mahura, was purchased prior to the passing of Act XII of 1841, at a sale for arrears of Government revenue under Regulation XI of 1822. It is admitted that the Regulation in question contains no provision which can affect the rights of the plaintiff in the present suit. The 19th and 20th sections of that Regulation empowered the Government, in case of a *benami* purchase, to annul or cancel the sale, and to dispossess the purchaser.

As to the purchases made after the passing of Act XII of 1841, Section 22 of that Act provides "that any suit brought to oust a certified purcha-" ser as aforesaid, on the ground that the purchase " was made on behalf of another person, not the " certified purchaser, though by agreement the " name of the certified purchaser was used, shall " be dismissed with costs." Act XII of 1841 was repealed by Act I of 1845, and it has been decided, and we think rightly decided, by Mr. Justice Mitter, in *Booa Russoolee* v. *Nawab Nazim of Bengal*,* that, by such repeal, the defence which the nominal purchaser would have had in a suit by the real purchaser is taken away.

Then comes a question as to a purchase of six annas of Mahespur made by the defendant Tundan Sing, at a sale for arrears of Government revenue, after the passing of Act I of 1845.

The case of a purchaser at a sale for arrears of Government revenue made by the manager of a joint Hindoo family in his own name, on behalf of the joint family, does not appear to be expressly provided for by Section 21 of Act I of 1845, and it would only be by a forced construction that such a case could be brought within the terms of that section. The section is a penal one, and should, we think, be construed strictly. The words are, "Any suit brought to oust the certified " purchaser as aforesaid, on the ground that the " purchase was made on behalf of another person, " not the certified purchaser, though by agree-" ment the name of the certified purchaser was " used, shall be dismissed with costs."

I think it must be taken as found as a fact that the purchase of Mahespur was made by Tundan Sing, as managing member of the joint family, on behalf of himself and the other members of the family. The suit is not brought against Tundan Sing on the ground that the purchase was made on behalf of another person and not of himself. The purchase was, in fact, admittedly made by him on his own behalf, though others may be interested with him. The suit is not brought to oust him, but to establish the rights of his co-sharers as joint owners with him. The language of Section 36, Act XI of 1859, is different from that of Section 21 of Act I of 1845. Words are introduced in the latter enactment which may probably include the case of a purchaser by the managing member of a joint family in his own name. It stands as follows, "Any suit brought to oust the certified " purchaser as aforesaid, on the ground that the " purchase was made on behalf of another person, " not the certified purchaser, or on behalf partly of " himself, and partly of another person, though " by agreement the name of the certified purcha-" ser was used, shall be dismissed with costs."

On the whole, we are of opinion that a purchaser at a sale for arrears of revenue under Act I of 1845, made by the managing member of a joint Hindoo family in his own name, but on behalf of the joint family, is not affected by the 21st section of that Act; and that, notwithstanding anything contained therein, the members of such joint family may sue to enforce rights acquired by them under such a purchase, as against the managing member, though he is the sole certified purchaser.

The result is that, in our opinion, the appeal must be dismissed with costs.—*Appeal dismissed.* —*20th April* 1870.—*Idem.—Part XXVIII.*

* *April 26th*, 1869.—In this case, Mitter, J., relied on *Raja Satya Saran Ghosal* v. *Mahesh Chandra Mitter*, 2 B. L. R., P. C., 23, q. v., and also on *Gopee Mohun Thakoor* v. *Raja Radhanath*, 2 Knapp's P. C. Cases, 228, as illustrating the doctrine that "a statute which does " not declare a particular transaction to be illegal, but " which is merely restrictive of jurisdiction; or, in " other words, which simply prohibits the cognizance of " a suit based upon that transaction, can be set up as a " bar to such suit, after it has been repealed by a subse-" quent Act of the legislature."

HIGH COURT—N. W. PROVINCES.

[*Appellate Jurisdiction.*]

TURNER, OFFG. C. J., AND TURNBULL, OFFG. J.

Revenue Courts—Jurisdiction—Rent—Kabuliat.

Clause 3 of Section 23 of Act X of 1859, giving to Revenue Courts the adjudicature of complaints of excessive demands of rent, the Courts are not deprived of jurisdiction in such cases because incidentally they may have to determine as to the genuine character of a kabuliat.

S. A. 670 *of* 1870.

Kashee Ram (appellant), *v.* Gunga Pershad and others, (respondents).

THIS was a special appeal against the decree of Mr. H. G. Keene, Officiating Judge of Futtehpore, in Appeal Suit No. 2 of 1870.

Pearey Mohun and *Adjoodhya Nath* for the appellant, the plaintiff.

Hunooman Pershad and *Lulta Pershad* for the respondents, the defendants.

The particulars of this case will appear from the following judgment :—

The plaintiff complained that the defendant demanded from him excessive rent.

The defendant admitted he had made the demand alleged; but declared it was not excessive, in that it was agreed to by the plaintiff, as evidenced by a kabuliat.

The execution of this kabuliat is denied.

By some means or other the suit came for decision before a gentleman who was not competent to try it, namely, the Assistant Collector. He proceeded to try and dispose of it, and, having heard the evidence, and written an opinion, the Collector, who should have tried it, was good enough to adopt the whole proceedings as his own

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by inscribing the word "confirmed" at the foot of the Assistant Collector's proceedings. The Judge, on appeal, did not notice this irregularity; but, considering that the kabuliat had been rejected on insufficient grounds, he remanded the suit for trial under Section 351.

It is needless to point out that this procedure was erroneous on the ground on which he proceeded, as the suit had not then been disposed of on a preliminary point, although it would have been a proper order had he founded it on the irregularity of the proceedings in the Court of first instance. When the case came back to the Court of first instance it was brought on the file of the Officiating Collector, who, after examining the parties, dismissed the suit as incognizable by a Revenue Court, and this decision the Judge has, on appeal, affirmed.

It appears to us that the suit unquestionably falls within the scope of Section 23, Clause 3 of Act X of 1859. The words of that clause restrict to Revenue Courts the adjudication of complaints of excessive demands of rent. The plaintiff avers such a demand has been made, and the defendant, not denying the demand, justifies it.

The circumstance that it will be incidentally necessary for the Revenue Court to determine as to the genuine character of the kabuliat does not deprive that Court of jurisdiction.

The judgments of the lower Courts must be set aside and the case remanded to the Court of first instance for re-trial under Section 351; costs of this appeal to follow the event.—*1st August* 1870.—*N. W. Provinces Reports, Vol. II, Part VII.*

SPANKIE, J., AND TURNBULL, OFFG. J.

Lease of zemindary land—Hereditary—Tenancy from year to year—Onus probandi.

Where, by an old puttah, lands forming part of a zemindary had been leased at a specified rent, there being no words in the puttah importing the hereditary and istimrari character of the tenure, the absence of such words may be supplied by evidence of long uninterrupted enjoyment, and of the descent of the tenure from father to son, whence that hereditary and istimrari character may be presumed.

To rebut the evidence afforded by long uninterrupted enjoyment and the descent of the tenure from father to son, it lies upon the party asserting the holding to be from year to year only and determinable at will, to prove such assertion.

S. A. No. 377 *of* 1870.

Deen Dyal Singh and others (appellants), *v.* Heera Singh and others, (respondents.)

THIS was a special appeal against the decree of Rao Kanjee Sahae, Subordinate Judge of Ghazeepore, dated the 28th January 1870.

Pearey Mohun and *Ali Ahmud* for the appellants, the defendants.

Hyder Hossein, Dwarka Nath, and *Bunwaree Lal* for the respondents, the plaintiffs.

The particulars of this suit will appear from the following judgment:—

This is a suit to eject the defendants from 19 biswas, 17 biswansees of land, and to recover, mesne profits.

The plaintiffs claimed the right of ejectment on the ground that the defendants hold the land under a lease terminable at pleasure, and that they refuse to surrender, although notice was given to them of the plaintiffs' intention of resuming the land in Fusly 1275, and that they thus continue to hold wrongfully as trespassers, and are liable to the plaintiffs for the mesne profits of the land for Fusly 1276. They allege that the lease was by a parol agreement; that there was no fixed term of years stipulated; and that the tenancy of the lessees was a mere tenancy-at-will from year to year. They admit that the lease was granted by their progenitors to the progenitors of the defendants at least one generation back, and that it has subsisted now fully forty years. It is also admitted that they had, on a previous occasion, brought a suit for recovery of arrears of rent against certain sub-tenants of the defendants, which, on the defendants' intervention, was dismissed. Defendants contended, on the other hand, that the lease was a written one, and in perpetuity. They were unable to produce it, as it had been lost during the mutiny; but the holding had been in their family for nearly a century, and had descended to them in regular succession from father to son; and, therefore, so long as they paid the fixed rent stipulated, which, in fact, they had paid in full to Fusly 1275, they could not be ejected.

Two similar suits were brought by other plaintiffs, against the same defendants upon the same ground of action, for ejectment from certain other plots of land held under similar conditions, in which the defence set up and the issues between the parties were precisely the same.

The plaintiffs in all three suits are sharers (to the extent of one-third share each) in the same "patti dalip," and the several plots of land for which each set of plaintiffs now separately sues appear to have originally been one holding, and to have been leased to Nanka Singh, from whom the defendants are descended, under one and the same agreement; and the terms of the lease and the tenure of the land are the same in all.

The first Court, in determining the suit now before us in this appeal (Heera Singh and Gokul Singh, plaintiffs), found that, in a former suit instituted against the defendants in 1849, by Baboo Ram Raj Singh and others (from whom the plaintiffs are descended), for the recovery of arrears of rent of the holding now in dispute, the defendants had clearly asserted an adverse title under the lease which they then declared to be an istimrari tenure, and, holding thence that the suit was barred by limitation, dismissed the claim.

In the two other suits (Ram Lochun and others, plaintiffs, No. 573, and Naipal Singh and others, plaintiffs, No. 577, also now before us on the appeal of the defendants), the Munsiff held that the same bar of limitation did not apply, inasmuch as the interests of the several plaintiffs were distinct, and the result of the former suit (of 1849) and the adverse title then set up by the defendants could not affect the rights of others not parties to that suit; and on the merits, finding that the defendants had failed to prove the

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istimrari character of their tenure, he decreed the claim.

The lower Appellate Court, to which the plaintiffs appealed against the first Court's order dismissing their claim in this suit, and the defendants appealed against the judgment in the other two cases decreeing the claim, took up the three cases together.

The Subordinate Judge found that the subject-matter in dispute was the same in all; that the issue was on the same question, touching the conditions of the same lease, and regarding land forming different portions of the same holding; and he held, therefore, that the judgment of the first Court, dismissing the suit in one case and decreeing it in the others, was inconsistent. He overruled the finding in this suit on the question of limitation, and, agreeing in the finding as to the tenancy being from year to year only and determinable at will, reversed the decision in this case, and, dismissing the defendant's appeals in the other cases, decreed the claim in all three suits in the plaintiff's favour.

We observe that this decision is based entirely upon the principles laid down in certain judgments of the late Sudr Courts of the North-Western Provinces, and cited as precedents—No. 66 of 1865 (North-Western Provinces), dated 27th October 1865, Gur Dyal Singh, plaintiff, appellant, Padan Singh and others, defendants, respondents, and No. 199 of 1862, dated 11th May 1863, Rajah Tikam Singh, defendant, appellant, Hurlal, plaintiff, respondent; No. 51 of 1852 of the Calcutta Court, dated 25th July 1853, Musumat Amir-un-Nissa, defendant, appellant, Maharajah Het Narayan Singh, plaintiff, respondent, namely, that "the mere fact of lessees having "been in possession for many years, and of their "having been succeeded in the tenure by their "heirs, does not prove the lease to have been "granted in perpetuity," and "that even an "'istimrari mukarrari patta' does not convey any "hereditary right unless such terms as 'ba farzandan' or 'naslan bad naslan' are contained in "the body of the deed." Special stress is laid upon the necessity of such terms being *specifically* employed in order to establish the character of a lease in perpetuity and create an hereditary right in the lessee, and it is upon the absence of such terms from the agreement made originally between the parties in the present instance that the judgment mainly, indeed entirely, turns.

We cannot uphold this judgment.

It has been held by a decision of the Privy Council of 18th January 1869, in the case of Rajah Suttosurrun Ghosal *v.* Mohesh Chunder Mitter, which reiterates the principle already laid down in a former case of Baboo Gopal Lal Thakoor *v.* Teluck Chunder Rai and must be regarded as superseding the rulings relied on by the lower Appellate Court, that "where, by an old puttah, "lands forming part of a zemindary had been "leased at a specified rent, but there were no "words in the puttah importing the hereditary "and istimrari character of the tenure, the absence "of such words was supplied by evidence of long "and uninterrupted enjoyment, and of the descent "of the tenure from father to son, whence that "hereditary and istimrari character might be "presumed."

The present case is, we consider, precisely one of those to which this ruling applies.

We are of opinion that the whole circumstances shown in the evidence in the case furnish the very strongest presumption of the hereditary and istimrari character of the tenure under which the defendants originally took, and have since held, the land now in dispute, and that the plaintiffs have altogether failed to establish the right which they claim to eject the defendants.

It is true that the lease under which the holding was created has not been produced, and neither the precise terms nor the date of the grant actually made to the ancestors of the defendants have been put in proof; but it is shown that the whole of the lands now in dispute in the several suits under consideration between the parties originally formed one holding, which was given under one lease, some generations back, by the ancestors of the plaintiffs to the defendants' ancestors; that not only have the interests of the descendants of the original lessor been separated and divided, but the lands of the original holding have been sub-divided amongst the descendants of the first lessee, and have descended by inheritance from father to son in regular succession, through two and three generations, and from them to the defendants, and this has been with the full knowledge and consent of the plaintiffs and their predecessors, who have regularly received from the several defendants the proportionate share of the rent originally fixed upon the holding according to the share of their own interests in it, and the share of the holding severally in the defendants' occupation.

We hold, then, that the presumption is altogether in favour of the defendants' allegation that the tenure was of a perpetual hereditary character, and that, to rebut the evidence afforded by the long uninterrupted enjoyment and the descent of the tenure from father to son, it lay upon the plaintiffs to bring proof in support of their assertion that the holding was only from year to year, and determinable at will. This they have failed to do, and we consider that they have shown no title to come into Court to eject the defendants from the holding, and are not entitled to the decree which they have obtained from the lower Appellate Court.

We, therefore, decree the appeal, and, reversing the decision of the lower Appellate Court, dismiss the plaintiffs' claim with costs, and interest at six per cent.—*16th August* 1870.—*Idem.*

HER MAJESTY'S PRIVY COUNCIL.

[Bengal Case.]

Service jaghire in a zemindary—Tenure on the condition of a particular service—Right to resume.

Where A, the owner of the zemindary right, sought to resume from B certain lands which had been originally granted for the service of preventing the ravages of wild elephants in the zemindary, and A contended that, as B's tenure was only created subsequent to the permanent settlement,

he was entitled to set it aside under Act I of 1845—

HELD *that B's claim was founded on an earlier grant sixteen years before the permanent settlement, by which an hereditary jaghire tenure had been granted to those from whom B claimed; that, in every case, the right to resume must depend upon the nature of the particular tenure, or the terms of the particular grant; and that there was a clear distinction between the grant of an estate burdened with a certain service, and the grant of an office the performance of whose duties are remunerated by the use of certain lands.*

In this case the grant may be said to have been made pro servitiis impensis et impendendis—*partly as a reward for past, partly as an inducement for future, services; and, upon a true construction of the grant, though the grantee is still bound to protect the pergunnah from the incursions of wild elephants, should such incursions be renewed, he was not liable to have the grant resumed, because there is no longer any occasion for the performance of this particular service, there being now no fear of the depredations of these wild elephants.*

Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of Alexander John Forbes *v.* Meer Mahomed Tuquee and others, from the High Court of Judicature at Fort William in Bengal, delivered 26th July 1870.

Present:

LORD CAIRNS.
SIR JAMES W. COLVILE.
SIR JOSEPH NAPIER.

SIR LAWRENCE PEEL.

THE appellant is the owner of the zemindary right in Pergunnah Sultanpore, and Taluka Remac, in Zillah Purneah. These méhals were purchased by him in April 1851 from one Pertaub Singh, who, on the 24th July 1850, had purchased the estate, of which they then formed part, at a sale for arrears of Government revenue; and the estate so purchased by Pertaub Singh had once been part of a far more extensive zemindary, which in 1802 was first permanently settled with one Ranee Indrawatee.

In July 1862 the appellant commenced the suit which has given rise to this appeal, in which he claimed against the respondents, first, the right to resume 9,000 beegahs of land held by them upon the tenure, which will be afterwards considered; and, secondly, the right to recover from them 2,000 beegahs of land described as towfeer, or excess, being lands which he alleged they had wrongfully acquired under colour of their tenure by gradual encroachment or otherwise.

The Court of first instance allowed the first of these claims, but rejected the second. On appeal and cross appeal the High Court of Calcutta rejected both claims, reversing the decree of the Court below on the first, and affirming it on the second, and dismissed the suit. This appeal again raises both questions.

The claim of towfeer may be shortly disposed of. It was very faintly pressed at the Bar. Mr. Leith, it is true, relied upon a passage in the Ameen's report at page 73 of the record; but the Principal Sudr Ameen was of opinion that, on the Ameen's report taken as a whole, no excess of land was shown to be in the respondent's possession; but that, on the contrary, they appeared to hold less than 9,000 beegahs in all. The High Court has confirmed that decision, and no grounds have been laid before their lordships which would justify them in disturbing the concurrent finding of the two Indian Courts on what is, in fact, a mere question of boundary and measurement.

In dealing with the question of resumption, their lordships desire to state, in the first place, the conclusion to which they have come touching the origin and duration of the tenure on which the lands sought to be resumed are held.

The following is its history. In 1775 the lands in question were granted by the sunnud, at page 100 of the record, to Meer Synd Ally, a Persian, who had done, and was doing, good service in repressing or preventing the incursion of wild elephants coming from the Morungs or Terai upon the cultivated lands of Pergunnah Sultanpore. This first sunnud contained no words of inheritance. In 1786, the Meer, being then dead, the Government granted the second sunnud in favour of Meer Abdool Hossein Khan and Meer Ally Rezza, who represented themselves to be the elder brother and nephew of Meer Synd Ally, and, as such, his heirs. This sunnud does contain words of inheritance, and made the grantees and their descendants fixed jaghiredars. It is not shown what, if any, interruption of possession took place between the death of Meer Synd Ally and the date of this second sunnud. In February 1804, Mirza Mahomed Saduk Goolstana and others brought a suit against Meer Ally Rezza and the widow of Meer Abdool Hossein, alleging that they were the true heirs of Meer Synd Ally, and that the grantees under the second sunnud had falsely pretended to be his brother and nephew. The first decree in this suit declared the plaintiffs to be the true heirs of Meer Synd Ally, and directed the defendants to relinquish the possession and enjoyment of the

jaghire to them, treating apparently the former as trustees for the true heirs. On appeal the Provincial Court affirmed this decree and dismissed the appeal. But, considering apparently that it could not, without the sanction of Government, transfer the benefit of the second sunnud from the persons named in it to the true heirs of Meer Syud Ally, it directed that the possession of the former should remain undisturbed "until an order should be issued from head quarters," meaning the Governor-General in Council.

In consequence of these decisions the third sunnud was granted on the 10th January 1807. It recited the two former sunnuds, and that by the decrees in the last-mentioned suit the heirship of the plaintiffs had been proved, and the said jaghire continued to the plaintiffs. And it went on to state that, under these circumstances, the Government had, on the application of Meer Mahomed Saduk, confirmed the said jaghire lands to the plaintiffs, from whom the present respondents derive their title.

Under the three sunnuds the lands comprised in the jaghire have been held rent-free for nearly a century.

One of the questions raised in the suit is, however, that, under the circumstances above stated, the title of the respondents must be held to have been first created by the third sunnud in 1807; and that, inasmuch as the zemindary, of which Sultanpore was then part, was permanently settled in 1802, the appellant, who claims through an auction purchaser, is entitled, under Act I of 1845, to set aside the tenure as one created within his zemindary since the perpetual settlement.

Their lordships are of opinion that this contention cannot be supported. It is perfectly clear that the effect of the second sunnud was to create sixteen years before the settlement of the estate in 1802 an hereditary jaghire tenure, and that the settlement was made upon the assumption of the subsistence of that hereditary jaghire. The grant was perfectly good against the zemindar, who could not have come into Court to set aside the second sunnud on the ground that the grantees had obtained it from Government by fraud or misrepresentation. Nor, in fact, has any Court, or any authority, ever revoked or set aside that second sunnud. The decrees in the suit between the real and pretended heirs of Meer Syud Ally made (subject to the sanction of Government) the latter trustees for the former, and directed them to relinquish the enjoyment of the lands accordingly. And the Government by the third sunnud sanctioned that arrangement and confirmed the title of the true heirs. On this view of the transaction the action of Government and the inaction of the zemindar in 1807 become intelligible. For it is not to be presumed that the Government would have assumed the power of granting a new tenure in a settled zemindary, or that the zemindar would have submitted to such an invasion of his rights. Their lordships, therefore, concurring on this point with the High Court of Calcutta, are of opinion that the jaghire of the respondents must be held to be a tenure created before, and subsisting at the time of, the decennial settlement, and consequently that it is within the exception of the 26th Section of Act I of 1845; whether the appellant has, or has not, in respect of his estate, the powers of an auction purchaser under that Act, (as to which their lordships express no opinion); and whether the lands comprised in it were, or were not, part of the zemindary settled in 1802.

Has, then, the appellant established his right to resume the lands comprised in this ancient jaghire. His case is that they are within the limits of the zemindary settled in 1802; that as between the Government and the zemindar, they were then treated as mâl or revenue-paying lands, and a revenue assessed upon them, although they were then, and have ever since been, held rent-free as between the zemindars and the jaghiredars; that, under these circumstances, they must be deemed to be chakeran or service lands, and that the services on which they were held, being no longer required or performed, the right of the zemindar to resume them has accrued.

Some attempt has been made, on the part of the respondents, to show that the lands comprised in the jaghire are not even within the geographical limits of the settled zemindary, or, at least, have not been proved to be so. But, looking at the pleadings and the evidence, their lordships are of opinion that upon this point the appellant has established his case. He has given strong *primâ facie* proof of the fact, and there is no evidence at all to the contrary.

If this be so, the next question is, How were the lands dealt with on the occasion of the settlement? They were then unquestionably held rent-free under a subsisting sunnud, and the presumption is that they would be treated as lakhiraj. In that case no revenue would be assessed upon them. Nor would the zemindar acquire any right to question the validity of the title on which lakhiraj land of that extent was held. That question could only be raised by Government, and, having been decided adversely to Government in 1845, the title of the respondents would now be indefeasible.

On the other hand, it seems to follow that, if, on the occasion of the settlement, revenue was assessed on these particular lands as between the Government and the zemindar, they must, since they produced no money-rent payable to the zemindar, have been treated as in the nature of chakeran lands within the meaning of the 41st Section of Regulation VIII of 1793, upon the notion that the services to be performed by the tenant were equivalent to rent payable to the zemindar. It is, therefore, a

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very material issue whether, in point of fact, these lands were, on the occasion of the settlement, treated as part of the mâl assets of the zemindary.

Their lordships are not prepared to say that the appellant has established the affirmative of this issue beyond reasonable doubt.

He relies mainly on the evidence afforded by the quinquennial register, and the proceedings in the resumption suit brought by Government against the respondents, or those through whom they claim, which was finally determined in 1848.

Their lordships do not concur with the High Court in thinking that the first of these documents has not been properly authenticated. The learned Judges of that Court seem to have confined their attention to the extract at page 92 of the record, and to have taken no notice of the fuller document at page 122, which not only bears the Collector's seal, but is shown by the endorsements upon it to have been the identical paper produced by the jaghiredars in the resumption suit. The appellant's case is that the lands in dispute are included in the villages Taluka Ramgunge, and Mouzah Gurka, part of Taluka Remae, on which a revenue of 850 Rupees appear to have been assessed.

Their lordships cannot assent to the proposition of the learned counsel for the respondents that Taluka Remae is something different from Pergunnah Sultanpore, and that the appellant is bound to show that the lands in question are mâl lands within Sultanpore Proper. They think it is proved that Taluka Remae was part of Pergunnah Sultanpore in the larger sense of that denomination. Nevertheless, if the appellant's case depended solely on the quinquennial register, their lordships would doubt whether it had been sufficiently proved that the lands in question were subject to the assessment. For, even if it be assumed that the different villages or divisions of land mentioned in the chuckbund and Ameen's report are comprehended within the denominations of Taluka Ramgunge and Gurka, it seems consistent with that register that those mouzahs may have included the 9,000 rent-free beegahs in excess of the 5,819 beegahs mentioned in it as the lands in respect of which the revenue of 815 Rupees was assessed. But it is argued that the identity of the jaghire lands with the mâl lands in Taluka Ramgunge, &c., has been admitted by the respondents, or those through whom they claim in the resumption suit. The question, then, arises, what is the weight to be given to that admission?

Their lordships cannot agree with the learned judges of the High Court in treating it as a mere admission or argument at the Bar by a mookhtear whose authority to make it is not proved. It seems to them to be the foundation and substance of at least one of the defences deliberately pleaded by the jaghiredars in the resumption suit to the claim of Government. It was not the sole defence, nor can the ultimate decision of the case be said to proceed upon a finding by the Collector that the lands were mâl and not lakhiraj. For he seems to have held that the proof of the sunnud was of itself a bar to the claim of Government in that proceeding. Nevertheless, the admission appears, to their lordships, to be one of a grave character; and, though it is not to be treated as an estoppel, it at least casts upon the respondents the burthen of explaining it, and of showing that what was then deliberately asserted was not the fact. The onus, then, of showing that the jaghire lands are something distinct from the mâl lands of Taluka Ramgunge and Goorka, is shifted upon them. And this fact they have not attempted to establish by direct evidence. They have been content to rest on the alleged insufficiency of the proof on the other side. Their lordships, therefore, are constrained to say that, though the evidence before them is not conclusive, the preponderance of it is in favour of the allegation that the jaghire lands were made the subject of assessment in the settlement between the zemindar and the Government in 1802.

But is it a necessary consequence of this finding that the appellant is entitled to resume these jaghire lands? His right to do so must depend on the nature of the tenure; and it is worthy of observation that so little value did the zemindar in possession between the years 1835 and 1845 attach to this supposed right of resumption, that he did not intervene, as undoubtedly he might have intervened, to resist the then claims of Government.

The settlement between Government and the zemindar cannot affect the rights of the jaghiredars. The lands held on this tenure, even if then treated as in the nature of chackeran lands, differ widely from the ordinary chackeran lands contemplated by Section 41 of Regulation VIII of 1793. They seem hardly to fall within the description of "lands held by a public officer or a private servant in lieu of wages." Neither Meer Syed Ally nor his descendants were by the sunnuds appointed to an office known as "elephant hunter for the Pergunnah," or by any like description. Still less ground is there for saying that they were the private servants of the zemindar. Their right, whatever it be, was derived, not from any zemindar, but from the supreme authority in the State.

Their lordships have carefully considered the various authorities cited at the Bar, but they can find none which expressly govern the case.

Of those which have been decided by this Committee, it is sufficient to say that in the Madras Case, in 7 Moore, I. A., p. 128, the question really discussed and decided was whether the tenure in question was inam or amaram, it being established and almost admitted that, if it were the latter, it was

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resumable at pleasure; and the case in the 10th Moore, I. A., p. 16, decided that lands held in lieu of remuneration by a village Chowkeedar, though unquestionably chackeran within the meaning of Regulation VIII of 1793, Section 41, were not resumable at the pleasure of the zemindar, if the public, or the Government representing the public, had an interest in the appointment of the chowkeedar.

The Indian authorities are not quite consistent with each other; but, taken altogether, they do not appear to their lordships to establish the right for which the appellant contends in this case.

In the case of the 11th May 1857, the chackeran lands had been assigned for the maintenance of a chowkeedar, and the existing chowkeedar had no connexion with them, being otherwise remunerated. Other provision had, therefore, been made for the service to be rendered in return for them.

In the case of the 30th November 1857 the tenant whose services had been dispensed with, or had otherwise ceased, was clearly the mere private servant of the Maharajah (the zemindar). He was the person bound to perform all the leather work required in the family.

The case of the 11th December 1857 was one of ghatwalee tenure, and one of the learned Judges who decided it (Mr. Justice Trevor), in the subsequent case decided by him and Mr. Justice Campbell, 3 Weekly Reporter, p. 87, and again in the case decided by the Full Bench, 6 Weekly Reporter, p. 203, concurred in the ruling that all that was laid down in the first-mentioned case, beyond the decision that the zemindar was entitled to resume, when the ghatwal had actually failed to render the service which he was bound to render, was mere *obiter dictum.* Both these cases in the Weekly Reporter support the contention of the respondents rather than that of the appellant. Both also relate to ghatwallee tenures. The case decided in 1868, 1 Bengal Law Report, p. 120, is to the effect that, the Government having concurred in the suppression of the office, the son of a ghatwal, who had held his office, not by hereditary right, but on the appointment of the zemindar (though practically the son had continually been appointed in succession to the father), could not successfully sue to recover lands which the zemindar had resumed.

Their lordships do not think it necessary, for the determination of this case, to examine minutely these decisions touching the ghatwalee tenures. And they abstain the more willingly from doing so since it was stated at the Bar that some of them are likely to be brought regularly before this Board by appeal. But they cannot but express their concurrence in many of the general principles laid down by the Chief Justice in the case in the 6th volume of the Weekly Reporter.

Another case cited is that at page 84 of the Sudr Dewanny Udalut Decisions for 1858. The property, as in this case, was a jaghire. The decision did no more than remand the case for re-trial, with the following intimation of opinion, "The issue raised by the plaintiff is not solely whether the grant to the ancestor of the defendant is hereditary, but also whether it has any condition of service annexed to it or not, and, if it has, whether that service be still performed; should a condition of service be annexed to the grant, the hereditary nature of the grant will not be the test of its present validity, but the performance of the required service; and, if this service be not performed then, notwithstanding its hereditary nature, the tenure will be liable to resumption."

To this ruling, if it be understood to mean only, that where the continued performance of certain services is upon the true construction of the grant, the condition on which the lands are to be held, their lordships conceive no exception can be taken. But if it means, that whenever service enters into the motive or consideration for a grant, the grant will become void if for any reason the service ceases to be performed, their lordships think that the proposition is far too wide.

The conclusion which they would draw from the decided cases, as well as from the reason of the thing, is that in every case the right to resume must depend, in a great measure, upon the nature of the particular tenure, or the terms of the particular grant.

They agree with the observation of Mr. Justice Jackson, 6 Weekly Reporter, page 209, that there is a clear distinction between the grant of an estate burdened with a certain service and the grant of an office, the performance of whose duties are remunerated by the use of certain lands.

They have already stated that, in their opinion, the grant in question does not fall within the latter category.

Assuming it to be a grant of the former kind, their lordships do not dispute that it might have been so expressed, as to make the continued performance of the services a condition to the continuance of the tenure. But in such a case, either the continued performance of the service would be the whole motive to, and consideration for, the grant, or the instrument would, by express words, declare that, the service ceasing, the tenure should determine.

It appears to their lordships that neither the first nor the second sunnud is a grant of the kind last mentioned. Each proceeds in part upon the past services of Meer Syud Ally; nor is the consideration so far as it is unexecuted wholly the keeping up of a body of men to repel the incursions of the elephants, for the grantees are also to cultivate the waste land. The latter stipulation was probably designed

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to protect the already-cultivated districts of Sultanpore by interposing a further belt of cultivation between them and the forest. Hence the grant may be said to have been made *pro servitiis impensis et impendendis*—partly as a reward for past, partly as an inducement for future, services. Again, neither sunnud contains any words which expressly import that the tenure shall cease if, and when, any of the services cease to be performed. Such a provision is something very different from one which merely casts upon the grantee the performance of certain duties so long as they are necessary. The former makes the grant determinable when there is no further occasion for the services. But, in the latter case, if the operation of any natural cause (as, *e. g.*, the progress of cultivation which has caused the wild elephants to cease out of the land) removes the necessity for the services, the grantee will hold the lands practically freed from the condition originally imposed upon him. Their lordships are, therefore, of opinion that, upon the true construction of these sunnuds, the grantees, though bound to protect the pergunnah from the incursions of wild elephants so long as those incursions lasted; and, though still bound to do so, should, by any chance those incursions be renewed, and though they may be liable to forfeit the tenure, if they wilfully fail in the performance of this duty, are not liable to have their lands resumed, because there is no longer any occasion for the performance of this particular service, "there being now no fear of the depredations of elephants in those places." Had this been a grant reserving to the zemindar a small money-rent, as well as the services, (if, indeed, the latter are reserved to the zemindar,) their lordships would have had no doubt upon the case. But it seems to them that the unexplained anomaly of making mâl lands rent-free in the hands of the jaghiredars does not affect the construction of the sunnud or the rights of the parties.

It emphatically lays upon the appellant, who is seeking to dispossess or to rack-rent the respondents, who by themselves or their ancestors have brought these lands into cultivation, and enjoyed them for so long a period; who must have been permitted by former zemindars to continue undisturbed in such enjoyment long after the incursion of wild elephants had become mere matter of tradition, to make out a clear title to resumption. In their lordships' opinion he has failed to do so, and, therefore, though they dissent from the particular grounds on which the High Court has dismissed the suit, they think its dismissal was right, and ought to be affirmed. They will, therefore, humbly advise Her Majesty to dismiss this appeal with costs.

SELECT JUDGMENTS OF THE MADRAS SUDR UDALUT.

STRATTON AND HARRIS, J. J.

Zemindary village—Grant under puttah—alienation binding.

A sued B for the recovery of a zemindary village which he alleged had been only granted in lieu of wages for service. B contended that the village was held under a surva moccassa puttah A disputed this contention—first, because the division, of which the village formed a part, was then under attachment; and second, because, according to the terms under which the zemindary was held, the village could not be alienated—

HELD *that the alleged attachment had been, or was about to be, released at the time mentioned; and that the clear and obvious intent of the restriction in question, as well as of the corresponding legislative enactments, was to defeat improper alienations to the prejudice of the rights of Government, or of the successor of the estate.*

In accordance with these principles, B was declared to be entitled to hold the village under the puttah executed to his father.

No. 6 *of* 1821.

Rajah Rao Vencata Neeladry Rao *v.* Rajah Enoogunty Sooriah.

RAJAH RAO VENCATA NEELADRY RAO, Zemindar of Pittapore, sued Rajah Enoogunty Sooriah, in the Provincial Court for the Northern Division, to recover possession of the village of Gorasa, forming part of his zemindary, and also for the recovery of the sum of Rupees 8,133-2-0, being the amount of collections from the village in the years Bapoodania and Pramadee, or 1818 and 1819.

The suit was filed on the 14th January 1820, and the Provincial Court, by decree dated the 28th March 1821, adjudged restoration of the village to the plaintiff, and payment of Madras Pagodas 1,042, or Rupees 4,011-11-2, being the value of the produce thereof for the year Pramadee. The claim for the produce of the year Bapoodania was disallowed, and the parties were adjudged to pay their respective proportions of costs, namely, the plaintiff Rupees 266-7-2, and the defendant Rupees 886-9-9.

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From this decision Rajah Enoogunty Sooriah appealed to the Court of Sudr Udalut by petition dated the 13th June and admitted on the 18th July 1821, and the special grounds of appeal, and the answer of the respondent, have been heard and filed on record.

Referring to the pleadings filed in the Provincial Court, it appears that the plaintiff rested his title to resume the village in dispute, on the ground that it was originally granted by him in the year Radrodgaree (1804) to the defendant's elder brother Nursiah, and afterwards to the defendant, Rajah Enoogunty Sooriah. The defendant, on the other hand, claimed the right to hold the village as a surva mocassa under a puttah alleged to have been executed by the plaintiff to his (the defendant's) father, Chinniah, on the 3rd August 1800, accompanied by a dimmut addressed to the caupoos and curnums of the village. The plaintiff denied the execution of these two instruments, and he inferred the impossibility of their having been granted from the fact that, at the time of their alleged execution, the Carapah Mootah, in which Gorasa is situated, was under attachment for arrears of revenue. He further contended that, under the terms of the cowle granted by Government assigning the zemindary in lease to him for eight years, from 12th July 1795 to 11th July 1803, and under the conditions of the sunnud-i-milkeut-i-istimrar granted to him on the 6th May 1803, as well as under the provisions of Section 12, Regulation XXV of 1802, he was incompetent to alienate the village by assigning it as a surva mocassa.

Although it was in the highest degree material to the support of the plaintiff's case to prove that he granted the village in 1804 to the defendant's elder brother Paupiah in lieu of wages for service, and that he continued it for the same purpose to Nursiah and afterwards to the defendant, he did not attempt to produce any evidence whatever, either parol or documentary, to this point. If this point had been satisfactorily established, it would have afforded the strongest presumption against the execution of the puttah, on which the defendant founded his title to hold possession of the village, and would have successfully rebutted the evidence adduced by the defendant, to prove the actual execution of that instrument. It is not easy to account for the plaintiff's total abandonment of this material part of his case otherwise than by the supposition that he knew the plea to be unfounded in fact. His admission that the defendant's family held the uninterrupted possession of the village from 1804 to 1818, without proving that the tenure of such possession was consistent with his right of resumption, operates very strongly to corroborate the effect of the positive evidence produced by the defendant to prove the execution of the deed to his father Chinniah, and a very natural motive for the grant is to be found in the plaintiff's marriage to Chinniah's daughter. The inference attempted to be drawn from the alleged fact that, at the time of the execution of the deed, the Carapah Mootah was under attachment for arrears of revenue, is obviously groundless; for, according to the plaintiff's own showing, the attachment had then been, or was about to be, released. The Court, therefore, have no doubt whatever that the plaintiff executed to Chinniah the puttah marked No. 37; and the remaining point for consideration is the legal validity of this grant, with reference to the conditions of the cowle, under which, at the time the grant was made, the zemindary of Pittapore was held by the plaintiff. By that cowle, the plaintiff was restricted from making alienation of every description during the period of his lease, and the Provincial Court, on the ground of this restriction, considered the plaintiff incompetent to make the grant, and they adjudged it to be illegal and invalid under the provisions of Regulation XXXI of 1802.

The plain intention of the restriction imposed on the plaintiff by the cowle No. 19 was to protect the interests of Government in the zemindary, and to prevent its resources from being impaired, while the plaintiff should hold the lease. It went no further than to declare that the Government would not recognize alienations of any description made during the lease, unless their consent should previously be had and obtained. A similar restriction in the permanent cowle afterwards granted to the plaintiff had the like object, but more extended in its effect, inasmuch as it went to secure the descent of the zemindary in perpetuity to the heirs and successors of the original grantee without unauthorized incumbrances by any of the holders, and the provisions of Regulation XXV of 1802 are confirmatory of the restitution. Section 8 provides for the payment of the public assessment on all separated portions of a zemindary by the grantee, if the transfer be regularly made, and, if otherwise, by the grantee; and, as a protection to the heirs, the validity of the transfer is made to depend upon its being conformable to the law of the parties and the Regulations of the Government. And by Section 12 Zemindars are declared absolutely incompetent, without the previous consent of Government, to make any appropriations intended for the purpose of effecting a permanent reduction of the public assessment on their zemindaries.

The clear and obvious intent of the restriction in question as well as of the corresponding legislative enactments being to defeat improper alienations to the prejudice of the rights of Government or of the successor to the estate, it follows, by a common rule of construction, that such alienations are voidable on the determination of the interest of the person who makes them. Thus, if the interest of Rajah Rao

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Vencata Neeladry Rao had ceased on the termination of the eight years' lease and the zemindary had been assigned to another, or if, pending that lease, the zemindary had been attached for non-payment of the stipulated kists, in the first case the grant to Chinniah would have been voided, and, in the second case, it would cease to have effect so long as the attachment should last. But, if the restriction is made to operate more largely and is construed to render the grant absolutely null and void, it would be carried beyond the object for which it was intended. It must be observed that the plaintiff's interest has suffered no interruption since the date of the grant to Chinniah, for, before the termination of the eight years' lease, the zemindary was granted to him in perpetuity.

The Provincial Court have alluded, in their decree, to the principle of decision in Case No. 11 of 1804 on their file, or Appeal No. 1 of 1804 on the file of this Court. There can be no doubt that the judgment in that case was substantially correct, inasmuch as it went to set aside a grant similar to the present, the continuance of which was claimed from the successor of the original grantor. On the principle stated above, the grant to the plaintiff in that case was clearly voidable, when the interest of the defendant's predecessor terminated by death or otherwise. But, on referring to the proceedings of the Sudr Court in that case, it cannot escape observation, that the real point for decision was mistaken or overlooked; and the Court would seem to have considered the question at issue to be the right of alienation, as between the Government and the Zemindar, at the time when the grant was made, namely, in the years 1794-5. Hence arose the reference to the provisions of Regulation XXXI of 1802, as the grounds of the decree which is filed among the exhibits of the present plaintiff; but those provisions were altogether inapplicable to the real point at issue between the parties, which was, whether the defendant was bound to continue a grant made by his predecessor, who held only a temporary and restricted interest in the estate, from which the grant was made. These observations have been considered necessary for the purpose of preventing the improper application of the Sudr Court's decree in Appeal No. 1 of 1804, as a precedent for the decision of cases similar to the present.

For the reasons above stated, the Court, setting aside the decree of the Provincial Court, do adjudge that the appellant, Rajah Enoogunty Sooriah, is entitled to hold possession of the village of Gorasa, under the puttah executed to his father by the respondent, Rajah Rao Vencata Neeladry Rao, on the 3rd August 1800, subject to the operation of the general principles stated above, and they order the restoration of the village to the said appellant, together with the mesne profits thereof, from the date on which the respondent aforesaid obtained possession under the decree of the Provincial Court.

The Court further adjudge that the respondent do pay all costs in the Provincial Court and in this Court.

HARRIS AND GOWAN, J. J.

Malabar sovereignties — Acquisition of province — Claims to compensation, or malikana.

C. R. sued five respondents for the recovery of money, lands, and superiorities, due to him as Colatery Rajah in Malabar. C. R.'s ancestors were the chief Rajahs under a sort of feudal system according to which the ancient kingdom of Malabar was administered and divided, the respondents being the representatives of the four junior Rajahs under that system. During Hyder's invasion of Malabar, C. R.'s ancestors fled to Travancore, and the elder of the inferior Rajahs was left in charge of the Government. On the cession of the country to the English by Tippoo, the inferior Rajah left in charge appropriated to himself the compensation given by the English Government, which ought to have gone to A's ancestors. The first respondent alleged that all the branches of the family held their lands in their own right, and that he had properly received the compensation granted by the English—

HELD *that, whatever might have been the ancient rights of C. R. and his ancestors, they had been abrogated by the conquest of Malabar by Hyder and its cession to the British by Tippoo; and that the first respondent was the representative of the Rajah, to whom the Government had assigned the territory in question in fief, and subsequently (in exchange) the compensation or malikana allowance, in token of amity and in consideration of his friendly alliance during the war with Tippoo.*

No. 9 of 1821.

Colatery Rajah, of Colutnaad, *v.* Cherikal Ravee Vurma Rajah and four others.

THE appellant, on the 15th July 1816, sued for the recovery of Rupees 16,221-3-50, and certain lands and superiorities, from the first respondent, and against all five respondents, to be acknowledged by them as the lawful successor and person legally entitled to the puttenrunda or malikana allowance, and the immunities attached to the rank of Colatery Rajah.

The Provincial Court for the Western Division, on 2nd June 1819, passed an order dismissing the suit, with full costs, against the appellant, under Section 10, and Clause 4, Section 18, Regulation II of 1802, on the grounds that a former decree had been passed upon the subject of the claim, which

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had been adhered to for a period exceeding twelve years. From this order, the appellant, on 2nd December 1819, preferred a summary appeal to the Court of Sudr Udalut, who, on the 6th April 1820, instructed the Provincial Court to revive and determine the suit on its merits.

The Provincial Court having accordingly investigated the case, passed a decree, on the 30th June 1820, dismissing the claim, with additional costs to those adjudged by their previous order. The appellant, being dissatisfied with this decision, presented a petition of appeal therefrom, on the 29th January 1821, which, together with the answer of the first respondent, have been heard and filed on record.

The appellant is a member of the family of the Odeamungalum Koulghum or house, and, being the senior male in age of that Koulghum and of the Polly Koulghum, succeeded to the rank of the first or Colatery Rajah, in the month of Khany, year 990, corresponding with September 1814, on the death of the late Colatery Rajah.

The five respondents are members of the Polly Koulghum, which, at present, consists of the five following separate branches, the first respondent being the chief of the Cherikal Koulghum; the second respondent being the chief of the Tevanangate Koulghum, to which she succeeded on the death of the Tekellungoor Rajah, who died subsequent to the institution of this cause, and who was one of the original defendants; the third respondent being chief of the Chengue Koulghum; the fourth respondent being chief of the Pudinjar Koulghum; and the fifth respondent being chief of the Kawanisherry Koulghum.

The appellant, in his several pleadings, explains the nature and constitution of the ancient kingdoms of Colutnaad or Kolla Soroovum, over which, according to the laws of succession to that sovereignty, he has become the chief Rajah, and in virtue of which he founds the present claim.

He states that a former sovereign of Keroola or Malabar, named Cheroomem Peroomal, divided this empire into four kingdoms or soroovums, and established similar rules of succession for the Rajah of each soroovum. The four kingdoms are as follow: the Kolla Soroovum, constituting that in dispute; the Tripa Soroovum, constituting the present kingdom of Travancore; the Neddierappa Soroovum, constituting the kingdom of the ancient Zamorin Rajah of Calicut; and the Parambodeppa Soroovum, which is conjectured to constitute the kingdom of the Cochin Rajah.

He then explains that over the Kolla Soroovum one senior and four junior Rajahs were appointed in order of succession for the government of the kingdom, and that these Rajahs must belong to the families of the Odeamungalum and Polly Koulghums, including the Poothoowilly Koulghum, a separate branch of the latter. These five Rajahs are stated to be the senior males of the above koulghums, the oldest being the Colatery Rajah, the second being the Tekellangoor Rajah, the third being the Wuddukulungoor Rajah, the fourth being the Nalumkoor Rajah, and the fifth the Aujumkoor Rajah. And it is described that the oldest female of these respective koulghums was accustomed to some distinction, and entitled to the station and dignities annexed to the Achumma Moopastanum.

The pleadings state that the Rajahs above described, on succeeding to their respective stations, were placed in possession of palaces and territory; but it would appear that, with the exception of what the first respondent enjoys, none of this property remains, it having been wrested from the Kolla Soroovum by other Rajahs or Chiefs, and retained by them until the cession of the Province of Malabar to the English on 18th March 1792.

It has been shown above that the Colatery Rajahs must be of the families of the Polly Koulghum and the Odeamungalum Koulghum, which appear to have been originally united as one koulghum, but subsequently separated, though at what period, is not disclosed.

The Polly Koulghum was also formerly united with its separated branch of the Poothoowilly Koulghum; but no explanation is afforded of the date of division, and no reasons are given for excluding this branch from the suit; for its recognition of the appellant's right is equally necessary with the remaining members of the family. The record does not explain where the possessions of this branch of the Polly Koulghum are situated, or what they consist of. The designation of the remaining five branches of the Polly Koulghum have already been described, so that it appears seven petty Rajahs are now eligible to the progressive rotation of the five superior Rajahs.

The appellant and respondents were required to file lists of the Colatery Rajahs who had resigned since 913 or 1737-8; but the appellant alone produced a list which the Court consider correct, from the circumstance of the respondent omitting to file any. The following Rajahs comprise the number who have reigned until the accession of the appellant, and is descriptive of the koulghum to which each Colatery Rajah belonged, viz:—

1. Poothoowilly Kovilagata Rajah commenced his reign, or was reigning, in 913 or 1737-8.
2. Odeamungalum Kovilagata Rajah commenced his reign in 933 or 1757-8.
3. Pally Kovilagata Rajah commenced his reign in 937 or 1761-2.
4. Poothoowilly Kovilagata Rajah commenced his reign in 950 or 1774-5.
5. Chenga Kovilagata Rajah commenced his reign in 959 or 1783-4.
6. Pundinjara Kovilagata Rajah commenced his reign in 974 or 1798-9.
7. Poothoowilly Kovilagata Rajah commenced his reign in 981 or 1805-6.
8. Odeamungalum Kovilagata Rajah, the present senior Rajah, appellant, commenced his reign in the month of Khany of the Malabar year 990, or in September 1814.

The appellant states that during the commotions in the Province of Malabar, alluding to its invasion by Hyder Ally and his son, his predecessors emigrated to the kingdom of Travancore, and the ancestors of the first respondent were employed by the absent Colatery Rajahs to manage the government of the Kolla Soroovum, which they faithfully administered until the death of the first respondent's predecessor in 972 or 1797. He then states that the Chenga Colatery Rajah, who commenced his reign in 1783-4, was prevailed upon to nominate the first respondent to conduct the affairs of his government; but, soon discovering that he departed from former rules and usages, he represented his conduct to Mr. Duncan, the Governor of

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Bombay, and demanded the management of the country to be vested in his own person, when he was informed in reply that the first respondent, as the subordinate Rajah, would show him respect and obedience. The appellant then proceeds to explain that the first respondent acted deceitfully, and, under the fortunate circumstance of his predecessor being in the management of the country, when it was assumed by the Company, and of himself being in charge when the Puttenrunda or Malikana allowance was conferred in lieu of that country, that he appropriated what virtually belongs to the Colatery Rajah, and which the predecessors of the appellant have hitherto been unable to sue for in consequence of their residence being in Travancore, and not having been allowed to visit the Province of Malabar.

The appellant describes that the quota of the Puttenrunda allowance appertaining to the Colatery Rajah amounts to Rupees 9,481-1-0 a year, and that, at the institution of his suit, one year and two instalments was due, amounting to Rupees 15,221-3-50, which he claimed. He also claimed the restoration of certain lands belonging to the Colatery Rajahs described as yielding an annual rent of 39,000 dungallies of nelly, valued at 500 Rupees, and situated at certain places in Colatnaad, named Eyakate, Madakara, Kolate Wyil, and Keerara Cherkumal. Two years' arrears of rent are also demanded, or 1,000 Rupees. He further claims to recover certain pagodas and their establishments, situated in the kingdom of Cherikal, and appertaining to the ancient sovereignty of the Kolla Soroovum. These three items constitute the particular claims preferred against the first respondent individually. Against the whole five respondents the appellant demands their recognition of him as their lawful superior and entitled to the rank, emoluments, and immunities appertaining to the station of the Colatery Rajah.

The four last respondents clearly countenance and connive with the appellant in the prosecution of this claim, for they fully admit every part of the demand referring him to the first respondent for substantial redress, by the restoration of lands, pagodas with their establishments, and the Malikana allowance.

The first respondent resisted the claim altogether, and contended that, in the Malabar year 913, or 1737-8, the ancient kingdom of Colatnaad having been invaded and partially conquered by the Jkkeri Rajahs, the reigning Colatery Rajah and the junior titled Rajahs, by a written deed, assigned to the first respondent's ancestor, named Parakumkata Kypicha Odea Vurma Rajah, such part of that kingdom as had not been dismembered, and it was at the same period further agreed that each family were thenceforward to be limited to, and maintained from, the property of their respective koulghum; since which, the management of the territory, constituting the basis of this claim, has devolved upon the five following successive Rajahs of the Cherikal Koulghum, namely,

1. Parakumkata Kypicha Odea Vurma Rajah commenced his reign in 913, or 1737-8.

2. Rama Vurma Rajah commenced his reign in 921, or 1745-6.

3. Ravee Vurma Rajah commenced his reign in 934, or 1758-9.

4. Rama Vurma Rajah commenced his reign in 963, or 1787-8.

5. Ravee Vurma Rajah commenced his reign in 964, or 1788-9,

and, as their lineal descendants, he, the first respondent, succeeded the last-named Rajah on his death in 972, or 1797, to all the rights of sovereignty, exclusively and independently enjoyed by his predecessors. He further contends that during the above reigns several Colatery and other Rajahs of the four junior ranks have attained their respective dignities; but that they have always been maintained from the revenues of their individual koulghum, and never exercised any authority over his territorial possessions or pagodas.

The first respondent then explains that his immediate predecessor entered into treaties with the English Government in 965, or 1790, during the war against Tippoo Sultan, and that, after the peace, he continued in possession of his ancient kingdom, as tributary Prince, under the Company, until his death in Karkadogum, year 972, or about 30th July 1797, when he, the first respondent, succeeded to the government of Cherikal by right of inheritance, as recognized by the English Government, the reigning Colatery Rajah, the King of Travancore, and all the Rajahs and Princes in the neighbourhood of Cherikal. He further explains that, at the conclusion of the Malabar year 974, or September 1799, the Honourable English Company conferred upon him the Puttenrunda or Malikana allowance now claimed, in lieu of the government of Cherikal, which was then assumed. He describes that in the year 975 or 1799-1800, the remaining Rajahs of his family preferred a claim against him relative to the Puttenrunda allowance and other property, when Mr. Rickards, the Principal Collector of Malabar, on 6th August 1803, passed a decree adjudging half of that allowance to belong to the respondent, agreeably to the instructions of the Board of Revenue at Madras, as well as one-fifth of the Polly Koulghum landed possessions, and that all the property acquired exclusively by the Cherikal Koulghum should remain vested in that family, the remaining moiety of the Puttenrunda allowance, after deducting 500 Rupees a year for the Odeamungulum Koulghum, was adjudged to the other branches of the Polly Koulghum; and the first respondent observes that, as the Colatery Rajah, who began to reign in 974 or 1798-9, was a party to the above decree, and as the appellant's own karnavan, or hereditary predecessor, laid claim to a share of the allowance, and to the Odeamungulum Koulghum property, at the same time and on the same occasion, this claim is not cognizable under Section 10, Regulation II of 1802, and that it should be dismissed under Clause 4, Section 18, Regulation II of 1802, the date of action exceeding twelve years. In regard to the claimed lands, the first respondent contends that no Colatery Rajah ever possessed any lands in Eyakote or Kolatoor Wyil; that the lands in Madakara belong exclusively to the Cherikal Koulghum; and that the lands in Keerara Cherikal are the sole right of, and in the possessive enjoyment of, the Keerara Kshetram, the pagodas and their establishments constituting a part of the demand, as stated by the respondent, to have devolved to his family in 913, or 1737-8, and to be included in the property

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adjudged to him in the aforesaid decree, dated 6th August 1803.

The Provincial Court did not deem it requisite to examine any witnesses, considering that the public records of Government filed by the parties, and referred to in the offices of the Collector and Zillah Judge of North Malabar, afforded conclusive and ample information whereon to form a judgment; and by their decree, founded on this evidence, the claim of the appellant was a second time dismissed, as his title to the rank of Colatery Rajah, to which he had succeeded from seniority in age, is not denied or disputed, and because the decree passed by Mr. Rickards on the 6th August 1803 determined the rights of all the branches of the Cherikal family, as well to the landed possession as to the distribution of the Puttenrunda allowance, and had been acquiesced in, and conformed to, by all parties for seventeen years.

From this judgment the appellant appealed on the grounds that the Principal Collector in Malabar was incompetent to pass a decree under the existing Regulations of Government; that he (appellant) was not a party to that decree; that no Colatery Rajah, previous to himself, after the first respondent's accession to the management of the country, had been able to visit Malabar, and effectually to prosecute a claim for the recovery of the Colatery rights; and that, from the recorded proceedings, as also from the evidence ready to be produced, it is manifest that the first respondent was merely a deputy, appointed to manage the country belonging to the senior or Colatery Rajah, who commenced his reign in 959, or 1783-4.

The Court of Sudr Udalut having attentively considered the record of this case, proceed to pass judgment. The decree passed by the Principal Collector of Malabar on 6th August 1803 is indubitably a legal instrument, for at that period the judicial system pronounced by the Regulations of 1802 had not been introduced into the above province, and, by the provisions of Section 47, Regulation II of 1803, passed on the 1st January of that year, Collectors were declared to be vested with judicial powers in those districts whereto the judicial system did not extend. But it is nowhere shown, either in the body of the above decree marked E. or in other proceedings, that the appellant, or any of his predecessors, or any Colatery Rajah, was a party in the suit wherein that decree was passed, though at the same time it is manifest that the appellant's particular family property was considered in it, and that some of the family appeared in person or by proxy can hardly admit of a doubt; yet, as at the period of passing that decree the appellant had not attained the rank of Colatery Rajah, and as his family koulghum had been adjudged to participate in the Puttenrunda allowance to their satisfaction, so as to preclude an appeal from such decision, the Court are of opinion that the decree aforesaid forms no bar to the institution of a suit for the consideration of the appellant's claims in his present rank, and that it cannot be regarded as having determined the rights appertaining to the dignity of the Colatery Rajah. The Court are further of opinion that the appellant has shewn good and sufficient cause for not presenting his claim within twelve years from the date of action arising from the peculiar circumstance of the Colatery Rajah's general residence in Travancore on succeeding to that rank, and the difficulty of obtaining permission to visit the province of Malabar.

It is clear, as observed in the decree of the Provincial Court, that no person disputes the right of the appellant to the designation of the Colatery Rajah; and the Court of Sudr Udalut do not doubt that in ancient times and in the zenith of their power the Colatery Rajahs, either actually or ostensibly by deputies, enjoyed all the rights of sovereignty over the territories then subject to the rule of themselves and of their subordinate Rajahs; but it is justly observed by the Provincial Court that "the antiquated claims of the plaintiff "no longer exist, they having been abrogated by "the conquest of the whole of Malabar by Hyder; "and the cession of it to the Company by his son "Tippoo." And these facts of conquest and cession are indisputably proved by the record. Although the first respondent has not proved the fact of the remnant of the ancient kingdom of Colutnaad having been assigned to his ancestor by a deed in 1737-8, yet it is established that, at the period of a war breakng out with Tippoo Sultan in the year 1790, his ancestor was the reigning Rajah of Cherikal, and to whom Mr. Taylor, the English Resident at Tellicherry, on 2nd Midom 965, or 12th April 1790, addressed the communication in document B of the respondent's exhibits, proposing to afford him assistance in that war. Other documents demonstrate that the kingdom of Cherikal was ceded to the English by Tippoo on 18th March 1792, which proves that the contracting parties considered the rights of any third power in respect to sovereignty to have been abrogated and determined. These documents further explain that the predecessor of the first respondent was negociated with upon his own account for the revenue administration of the above kingdom until the termination of the Malabar year 974, or about 12th September 1799, when it was taken under the immediate government of the Company. Under these explanatory circumstances, the Court of Sudr Udalut are of opinion that previous to the period of the English acquisition of the province of Malabar, the ancient sovereignty of Colutnaad, subject to the rule of the Colatery Rajahs, had ceased to exist as a kingdom, and all emoluments and immunities connected therewith were extinguished with the dissolution of the kingdom; and the Court consider that, in consequence of the friendly alliance entered into by the first respondent's predecessor in the war alluded to, the English Government, on their accession to the sovereignty of the province of Malabar, in token of amity and humanity, conferred upon him in fief the territory he reigned over at the period of the alliance, and which has been latterly assumed under the government of the Company, giving to him in exchange the Puttenrunda or Malikana allowance, being two-tenths of the net revenues of the territory.

The Court of Sudr Udalut do, therefore, hereby confirm so much of the judgment of the Provincial Court for the Western Division as dismisses the claim with full costs, but on different grounds as afore stated. And the appellant is hereby further adjudged to pay all costs of appeal.

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OFFICIAL PAPERS.

EXTENSION OF SOUTH-WEST RAILWAY TO THE FOOT OF THE HILLS.

Proceedings of the Madras Government, Revenue Department.

Dated 16th July 1870, *No.* 1097.

As the extension of the South-West Railway from Poothanoor to the foot of the Hills has been determined upon, the Right Honourable the Governor in Council resolves to direct the Conservator of Forests to report fully on the sources from whence a sufficiency of fuel can be drawn to meet its requirements and the arrangements necessary to ensure a sufficiency for the future, both for the railway and the people. The expediency of floating down wood from the Hills for the use of the railway might be considered and reported on.

2. It will be necessary to clear a certain portion of the country on each side of the line between Mettapolliem and the foot of the Hills in order to keep off fever. This might be done by the Forest Department or by giving clearance leases.

3. If the stations are determined, or the intended sites are sufficiently known, the Consulting Engineer should at once communicate with the Collector of Coimbatore, in order that no land in the vicinity may be given on puttahs.

(True Extract.)

(Signed) H. E. STOKES,

Under-Secretary to Government.

ENFRANCHIZEMENT OF VILLAGE INAMS IN GODAVERY DISTRICT.

Proceedings of the Madras Government, Revenue Department, 10*th August* 1870.

Read the following Proceedings of the Board of Revenue, dated 9th July 1870 :—

Read Government Order, 29th June 1870, No. 963.

Resolved that the foregoing Order of Government be communicated to the Collector of the Godavery District.

2. In paragraph 9 Government sanction the introduction of the revised scheme of village establishments in the Godavery District from the commencement of the coming Fusly year, that is, from the 1st July 1870.

3. As a necessary preliminary funds should be provided. A portion of the funds has been provided by proclaiming the introduction of the Village Cess Act. But another portion, namely, that which is to be created by the enfranchizement of the village service inams, cannot be realized until after the actual issue of title deeds to the holders of those inams.

4. There are probably not much below 10,000 service inams to be enfranchized, and about as many title deeds to be issued. The registers prepared by the Deputy Collectors of the late Inam Commission will be of little use, the old indefinite areas, and still more indefinite assessments, having been therein adopted. The registers will, therefore, have to be drawn up *de novo* with survey areas and survey assessments of the inams, and the quit-rents in each case at five-eighths must be calculated. Another important delicate operation will have to be gone through in the course of this fresh registration. The excess areas detected by the survey in each case will have to be noted and fully assessed under the rules. This process, if done carefully, is sure to add considerably to the assets of the village service fund. Title deeds for each case of inam thus settled will then have to be prepared and forwarded to the Inam Department at the Board of Revenue for the purpose of being sealed and signed. On their being returned to the district and delivered to the several holders of inams to whom they are addressed, the collection of the quit-rents will commence.

5. The enfranchizement of the service inams is thus a work of considerable magnitude and detail, and will throw much additional labour on the Taluk and Hoozoor establishment of the Collector. The Board, therefore, are not sanguine that this work can be undertaken by the Collector without his being provided with a temporary additional establishment, and even then they are not certain that the progress of the work can be so efficiently superintended by his ordinary establishment as to ensure the enfranchizement being carried out in time to admit of the collection of the quit-rents within the present fusly.

6. If the revised scheme of village establishments must come into force from this fusly, as it is very desirable that it should, the realization of this object can, it occurs to the Board, be ensured by entrusting the work to the hands of a special officer, trained to, and quite familiar with, it.

7. The Board learn from the 2nd Member in charge of the Inam Department that P. Chentsal Row, the late Special Assistant and now Treasury Deputy Collector of the Chingleput District, could, if deputed to the work, accomplish it thoroughly before the month of November or before the first rents fall due. Chentsal Row, though now on leave, is willing to undertake this duty at once. His employment would involve no additional expense to the State, save probably a trifling sum in the way of travelling charges and batta, which could be met from general savings under that head in the Revenue Budget.

8. The cost of extra establishments will probably not exceed Rupees 4,000 at the outside, which sum can also be met from general savings in the Revenue Budget; or, if there arises any difficulty in thus meeting it, it may be met by a loan from the large surplus of the Village Service Fund of Kurnool, to be re-paid out of the surplus of the Village Service Fund of the Godavery District at the end of the fusly.

9. If this proposal of employing a special officer is immediately sanctioned, there are many facilities offered for the speedy progress and completion of the work, by its being undertaken in the earlier months of the fusly, when the work in taluk cutcherries is usually less heavy and the village officers less engaged in collection or jummahbundy work, and when consequently the former will be able to give their utmost assistance, and the latter to attend without detriment to their revenue duties.

10. The Collector will observe, from the concluding paragraph of the Order of Government, that about Rupees 3,000, being the inefficient portion of the assets accruing from the village cess, must be deducted from the general *avail-*

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able assets, or, in other words, as explained further on in the Government Order, the sum of Rupees 3,000, which is the excess of cess in certain villages over and above the amount required for those villages according to scale, must be re-distributed over, and absorbed by, those villages. This can be done in two ways, either by increasing the salaries or the *numbers* of the village servants in the villages concerned. The Collector is requested to submit proposals on this head.

11. The Collector will, on receipt of these Proceedings, take the necessary steps for the preparation of an accurate and complete register of all village service inams, exhibiting the registered extent as well as the survey areas and the revised assessment determined by the Revenue Settlement Department. With a view to secure uniformity, the form of enfranchizement register, herewith forwarded, may be adopted throughout the district.

Order thereon, 10th August 1870, No. 1200.

Under the circumstances reported in paragraphs 4 to 9 of the foregoing Proceedings, the Government resolve to sanction the temporary employment of Deputy Collector Chentsal Row, with a small establisment, for the purpose of enfranchizing the existing village service inams in the Godavery District. Chentsal Row's services will accordingly be placed at the disposal of the Collector of the district for this special work, and the estimated expenditure on account thereof will be met from savings in the Revenue Budget.

(True Extract.)

(Signed) H. E. STOKES,

Under-Secretary to Government.

PLANTATIONS FOR THE USE OF RAILWAYS.

Proceedings of the Madras Government, Revenue Department.

Dated 19*th August* 1870, *No.* 1299.

With advertence to paragraph 20 of the Government Order under date 28th July 1870, No. 1,124, the Right Honourable the Governor in Council is pleased to direct that Mr. Walker shall, in the first instance, turn his attention to that portion of the country through which the Great Southern of India line of railway will pass, which is situated between Palamcottah and Madura. It is believed that it will be found that in this locality there is little or no natural jungle so situated in regard to the projected line as to be suitable for reserves, and it will consequently be necessary to designate sites for plantation. Probably the wants of the line for about twenty-five miles south of Madura may be met from the natural forests of that district, so that about six square miles of plantation will be needed for the remaining distance of about seventy-five miles. These plantations should be formed on waste or occupied land, (the latter being purchased for the purpose where absolutely necessary), and should in no case be situated more than ten miles from the line of railway. Similarly, if any jungle land suitable for the formation of reserves should be found to be available, the reserve must in no case be situated more than fifteen miles from the line.

2. The sites for these plantations having been chosen, Mr. Walker will then proceed to select suitable reserves of natural jungle between Madura and Trichinopoly, as directed in paragraph 20 of the Government Order under date 28th July 1870.

3. For the wants of the existing line of railway between Erode and Negapatam, Mr. Walker will be authorized to take charge of the plantations of casuarina, which are believed to be now under the care of the Collector of Tanjore, in the neighbourhood of Negapatam. If found to be suitably situated and to be likely to be successful, these plantations may be considerably extended, and it is possible that some portions of the Government forest land, situated between the line of railway and the Cauvery in the Coimbatore and Trichinopoly Districts, may be found on examination to be well adapted for the formation of reserves.

(True Extract.)

(Signed) H. E. STOKES,

Under-Secretary to Government.

CULTIVATION OF FOREIGN TOBACCO IN TANJORE.

Proceedings of the Madras Government, Revenue Department, 21*st October* 1870.

Read the following Proceedings of the Board of Revenue, dated 5th August 1870, No. 5181 :—

Read the following letter from the Acting Collector of Tanjore, to the Acting Secretary to the Board of Revenue, dated Vallum, 13th April 1870, No. 126.

With reference to the Board's Proceedings, No. 1678, of the 11th ultimo, I have the honour to state that foreign tobacco will undoubtedly grow in this district. Mr. Whiteside has for some time been raising some from Ohio and Shiraz seed, and has supplied me with a memorandum (A.) on the experiment, which I enclose, together with two bundles (sent separately) of the cheroots from his first crop by banghy. They are sound; but, after all, are very like the ordinary Dindigul cheroots, with parhaps slightly more flavour. But it must be remembered that they are not a good sample, because the plants were allowed to grow up to their full height, and were exceedingly luxuriant in growth, some being 4 feet high with leaves 1½ feet long, and in flower and seed, the result of which gives a much coarser tobacco than when the plants are kept small and the leaves picked when smaller and younger.

2. I also enclose a memorandum from Dr. Ross (B.). who, by putting down the seed in the very hot weather, managed to get something considerably worse than the country variety; but then, as he says, it shows that the plant will grow under unfavourable circumstances.

3. On the whole, I have no doubt that Havannah tobacco will grow in this country just as it will in Germany; but it does not by any means follow that the result will be Havannah cigars any more than there. It may give a slight improvement on the country variety; but it is exceedingly doubtful whether this would find a market in England. This can only be proved by actual experiment, and the best plan, therefore, undoubtedly is, as mentioned in paragraph 3 of the Proceedings of the Agri-Horticultural Society circulated, to

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try foreign seeds of this kind on a large scale, and under various circumstances with regard to time of sowing, mode of culture, soil and manure, amount of irrigation, &c., &c., at the gardens in Madras; and then, when a fair estimate can be made as to the actual market value of the crop in England and prices that merchants are actually willing to pay, the culture can be confidently recommended to the natives. But they have no taste for *experimenting*, and I think it may be a mistake to invite them to attempt it until the possibility of success has been fully demonstrated elsewhere, since a failure, through ignorance or mistake, might seriously endanger or retard the introduction of what might otherwise be successful. I should like, however, a small quantity of the Havannah and Manilla seed for distribution to a few who may be expected to give it a fair trial.

4. I may add, for the information of others who are making trials, that the cultivation requires a certain amount of care when the plants are young, as the soil must just be kept moist and nothing more. Mr. Whiteside tells me that covering over the young plants with tatties and cocoanut leaves, and watering them so that the moisture may gradually drip through, is a very successful plan. The soil also should be decidedly rich and superior to the usual class of dry lands. Ants are also very fond of the seed, so that it ought to be sown in boxes or pots raised from the ground.

ENCLOSURE No. 1.

A.

Extract of Memorandum from W. S. Whiteside, Esq., C. S.

In the latter part of 1866 Mr. J. D. Sim gave me a few small packets of Ohio and Shiraz tobacco seed, of which I distributed some to ryots in South Arcot (with what result I never heard), and some I planted in my own garden at Cuddalore. It grew luxuriantly, and the crop was approaching maturity, when I was unexpectedly ordered to act as Collector in South Canara. I went, and never returned to Cuddalore. My servants gathered the tobacco, and reported that it was very fine; but, as I did not see any of them for some eight or nine months, the tobacco had all been smoked; at any rate, I never got any of it. I did not know I had any of the seed left till after I came here in September 1868, when unpacking a box I came upon four packets, two of each kind. I fancied the seed must be quite spoilt by that time, but resolved to give it a trial. I gave two of the packets to Dr. Ross, the Zillah Surgeon here, and two I planted myself. To my surprize, every seed came up. I did not plant the seed till the beginning of January 1869, if I recollect right; at any rate, I put it into the ground much too late. It grew magnificently, some of the plants being more than four feet high, with very large leaves; but I left Tanjore, when my Court closed in April for the recess, before the tobacco was fit to cut. I left very strict orders about it this time, and my servants gathered it carefully and stored it in a dark dry place till I came back. I then sent into Trichinopoly for one of the most skilful cheroot makers, and he came over and pronounced the tobacco to be first rate. The only misfortune was that the two kinds of tobacco leaves had been stupidly mixed by the gardeners when they were drying them. The cheroot maker made up the tobacco for use, and, putting aside all the inferior leaves, I had enough to put together 1,000 cheroots. These were made up last October. Several persons who have tried them declare them to be capital, not by any means strong in flavour, and only wanting keeping to be first rate. I let a good many of the plants run to seed, and the people here who grow tobacco told me that the leaves gathered from such plants make an inferior description of cheroots; so very probably these of mine might have been much better if more care had been observed in gathering the leaves, keeping the two kinds separate, and so forth. I gave a quantity of the seed to Mr. Breeks to distribute amongst the Badagas on the Hills, and I have still a little left. I planted some of it in September last year, and reared a very decent little crop. This time I tried to carry out the system observed by the Telugu tobacco growers in the Rajahmundry and Godavery Districts, and for which purpose I got a paper of instructions prepared for me by a native up there; but I am inclined to think that the tobacco of this second crop has not been quite of such fine quality as on the former occasion, and the sun seemed to affect it. I noticed that those plants which were screened from the hot afternoon sun grew very luxuriantly and to a great height, while those that were exposed to the sun all day were almost dwarfed. Whether this had anything to do with the seed used I do not know. I am now collecting the seed and have gathered a tolerable quantity of each kind, and I have a good quantity of leaves, too, now drying. But this year I have purposely allowed the whole crop to go to seed, as I want to get enough to try an experiment on a more extensive scale next cold weather.

(Signed) W. S. WHITESIDE.

ENCLOSURE No. 2.

B.

Extract of Memorandum from J. Ross, Esq., M. B.

Early last year Mr. Whiteside was good enough to give me two small packets of seed, one of Ohio, the other of Shiraz tobacco. In March, I think, I sowed these seeds in boxes filled with a moderately rich mould. Though the seed was sown rather thickly, I was not prepared for the very thick crop of seedlings which came up. Many of these, however, soon died down simply from overcrowding, and the survivors, having more space, throve luxuriantly. In due course they were transplanted into ordinary garden soil, without any special preparation, in rows about 18 inches apart, and, when I left this for the Hills in the end of April, every plant was doing well. Some weeks before my return, that is, about the beginning of July, the plants being pronounced ready by a man, who was supposed to understand this part of the process, were cut a few inches from the ground, and then followed the usual process of curing.

2. On my return I found that the cut stumps had sent forth vigorous shoots, which ultimately attained to the height of 18 inches or 2 feet. From a few plants which had not been cut I obtained an

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abundant supply of seed, and this seed was sown about the beginning of last north-east monsoon. It germinated just as freely as the original seed had done, but, owing to want of space and the rather unsatisfactory results of my first crop as regards cheroots, I planted out very few of the seedlings.

3. The past season, in my garden at least, has been very unfavourable in one respect. Everything suffered severely from the ravages of various species of caterpillars and flies, and my tobacco was no exception. Over and over again every leaflet was stripped to the midrib; then young shoots came up to be eaten in their turn, and yet, in spite of all this, so vigorous and full of life were the plants, that in the end they triumphed and shot up to the height of two feet and over; but the effect of this prolonged struggle for existence was to dwarf the leaves, particularly those at the base, and to make them coarse, tough, and fibry.

4. The plants, however, flowered and seeded freely, and I have now a small supply of this seed. What with my absence the first year and the ravages of insects this last season, I am unable to offer any comparison between the two kinds. Ohio and Shiraz, both, so far as I can now judge, did equally well.

5. I have already alluded to the results of my first year's experiment as regards the cheroots made from the tobacco. I got a man trained to the work from Trichinopoly to manufacture them; but, on examination, he pooh-poohed the tobacco as worthless, and it required considerable persuasion to make him set to work.

6. For obvious reasons I persisted and watched him carefully while making up 1,000. He said they would smoke badly, show a black ash, and be deficient in flavour. So far as I have tried them, and that, you may suppose, has not been to a great extent, they have fulfilled his prediction in every point. But then he said the bad quality was due to the seed having been sown at a wrong season; to the plants not having been carefully tended; and to the leaves not having been properly cured. And in this matter also he is, so far as I know, perfectly right. You will see, then, from this, what my experiment amounts to. It proves that these two kinds of seeds will grow and thrive vigorously under every disadvantage, for could anything be more trying than the hot season in one case and swarms of insects in the other? And there is nothing in the experiment to show that, under proper conditions and with due care, the tobacco may not ultimately be found equal, if not superior, to any of the native kinds.

7. I shall feel obliged by a small supply of the seeds you mention, more particularly if you can give me any practical directions as to the mode of cultivation, &c.

(Signed) J. ROSS, M. B.

Submitted for the information of Government, together with a copy of the Proceedings of the Board, dated 11th March 1870, No. 1,678.

2. The Board considered it right to consult the Superintendent of the Government Farm on the subject of the cultivation of tobacco, as they learned that he had turned his attention to the matter in connextion with proposals to introduce the cultivation of tobacco in Ireland. He has favoured them with a memorandum in which he expresses his opinion that "the questions to be "investigated are as yet more physiological than "agricultural. As agriculturalists, we can with "ordinary skill grow large crops of tobacco; but "we cannot be so sure *that the manufactured "article will possess a value equal to the cost of its "production.* It has been ascertained by analysis "that the best tobaccos contain very little albumen "and nicotine, while the bad-smelling and bad-"tasted tobaccos contain a large quantity of both; "thus, Maryland and Havannah tobaccos contain "scarcely two per cent. of nicotine, while French "and German tobaccos contain as much as eight "per cent. The question to be determined is, how "to grow *good* tobacco, rather than how to grow "tobacco? The investigations to be made are too "minute for any but those who have been used to "such investigations; it would be perfectly use-"less to turn them over to any other class of men. "The experiments had better be conducted by the "Committee of the Society themselves, under the "advice of an Analytical Chemist, versed in "organic chemistry; indeed, such a Chemist as "Mr. Broughton, in whose special line the inves-"tigation appears to lie."

3. The Board have taken an opportunity of consulting Mr. Broughton on the subject demi-officially, and his opinion is strongly corroborative of Mr. Robertson's. He points out that the cultivation of tobacco is a scientific pursuit in France under the management of a Chemical Director, and further kindly expresses his willingness to undertake the requisite analysis and experiments here if the Government will authorize him to do so.

4. The Board attach much importance to the whole question; but consider it obvious that scientific analysis and carefully managed experiments must precede any further attempts to improve tobacco, and accordingly request Government to place Mr. Broughton in communication with the Farm Committee and Mr. Robertson with this view.

5. The Board would then procure a carefully prepared sample of the best indigenous tobacco for analysis by Mr. Broughton, and would request the Superintendent of the Farm to undertake experiments in the cultivation of indigenous and exotic kinds in communication with him, in order that he may have an opportunity of testing the produce raised under different conditions of cultivation and cut at different stages of its growth, so as to secure a thorough examination of the whole subject.

Order thereon, 21st October 1870, No. 1,606.

The Proceedings of the Board are approved. The Board should forward samples of the best indigenous tobacco, which can be procured, to Mr. Broughton for chemical analysis, and that gentleman will be requested to undertake the required experiment.

2. The experimental culture of tobacco at the Government Farm should be commenced as proposed, and the Government will receive with interest an account of the result attained.

(True Extract.)

(Signed) R A. DALYELL,

Acting Secretary to Government

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REFUND ON OLD STAMPS.

Proceedings of the Madras Government, Revenue Department, 28th October 1870.

Read the following letter from the Acting Secretary to the Board of Revenue, to the Acting Secretary to Government, Revenue Department, dated Madras, 5th September 1870, No. 5595:—

I am directed to acknowledge the receipt of Government Order, dated 16th August 1870, No. 1276.

2. Section 45 of Act XVIII of 1869 sufficiently provides for the renewal or refund of the value of stamps previously purchased and rendered useless by the changes it introduced, inasmuch as it provides for renewal or refund if the person possessing the stamp *does not require the same for* use.

3. In accordance with this section most stamps rendered useless by the new Act and held by private persons have already been returned to the treasuries, so that any rules which may be made now will have but a limited application.

4. The suggestion of the Government of India that applications for the renewal of these stamps should not be stamped under the Court Fees' Act may be embodied in the following notice :—

NOTICE.

Collectors will receive *verbal* applications for the renewal or the refund of the value of stamps purchased previous to the 1st January 1870 and rendered unfit for the purpose for which they were procured by that Act. If it is determined to grant the renewal or refund, the officer will record the fact under his signature in a book which will be kept for the purpose. Such applications need not be made in writing and stamped under the Court Fees' Act.

Order thereon, 28th October 1870, No. 1664.

The Government approve of the form of notice proposed for publication by the Board, and direct that it be printed in all District Gazettes.

(True Extract)

(Signed) R. A. DALYELL,

Acting Secretary to Government.

SHIRAZ TOBACCO RAISED IN TANJORE DISTRICT.

Proceedings of the Madras Government, Revenue Department, 11th November 1870.

Read the following Proceedings of the Board of Revenue, dated 25th October 1870, No. 6308 :—

Read the following letters :—

From the Collector of Tanjore, to the Acting Secretary to the Board of Revenue, dated Negapatam, 19th August 1869, No. 178.

From their Proceedings, dated 28th August 1868, No. 5134, the Board are aware that the two experiments made in this district with the Shiraz tobacco had entirely failed. The Board were good enough to send me some seed for a third time. This was entrusted to Anantaramier, Deputy Tahsildar and Sub-Magistrate of Trivady Division, and at present Acting Tahsildar of Combaconum.

2. This officer sowed the seed on 1st December 1868, in earthern pots, under his own personal supervision, and, though all of it germinated, only forty plants survived. From the fact of all the plants, with the exception of the above, having died, it is believed that the seed must have been more than one season old. In forty-five days the abovesaid forty plants attained a height of four inches, and bore each four or five leaves. The indigenous tobacco takes only thirty days to arrive at this stage. These seedlings were transplanted in two plots of three-fourths of a guli, each in two different villages. At first these plants were watered daily, and afterwards once in three or four days. In one of the plots the crop was cut in the end of February, and, in the other, on the 10th March 1869, the outturn being 1 lb. 2 oz. and 1 lb. 1 oz. respectively. The largest number of leaves to one plant was eight, and the smallest four. Both the cultivation and the preparation of the tobacco was conducted according to the method observed in the case of the indigenous kind. I forward* ten tolas of this tobacco for the inspection of the Board. I am not myself a sufficient judge of tobacco to know whether this is particularly good or the contrary.

* In a separate packet.

ENCLOSURE No. 1.—Sample of Tobacco.

From the same officer, dated Vallam, 19th September 1870, No. 309.

I have the honour, with reference to the Board's Proceedings, dated 5th August 1870, No. 5181, to forward thirty tolas* of tobacco raised by Anantaramier, Tahsildar of Sheally, from the acclimatized seed of Shiraz tobacco, received from the Board about two years ago. If the Board find that it is good and that its cultivation should be extended, I shall take measures accordingly. Anantaramier suggests that it would be as well to ascertain whether this kind of tobacco will find a ready market in England. There are about 1,250 lbs. of tobacco still in hand, which I can also forward if the Board want it. The seed was put in about 230 gulies of land and yielded 1,290 lbs. The ordinary country variety cultivated in the same extent of land gives 1,500 lbs. of tobacco.

* Sent separately.

ENCLOSURE No. 1.—Sample of Tobacco.

The Government Quinologist will be requested to favour the Board with his opinion of this tobacco on analysis, and also of the Shiraz tobacco received from the Collector with his letter, No. 178, of 19th August 1869.

2. The Collector should take care to preserve the seed. He might have a few cheroots made up carefully in Trichinopoly and send them to the Board for trial.

Order thereon, 11th November 1870, No. 1748.

Ordered to be recorded.

(True Extract.),

(Signed) R. A. DALYELL,

Acting Secretary to Government.

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ATTESTATION OF POWERS OF ATTORNEY BY MAGISTRATES.

Read the following Proceedings of the Government of India:—

Read the following letter from the Officiating Secretary to the Government of India, Financial Department (Separate Revenue—Stamps), to the Under-Secretary to the Government of the Punjab, dated Simla, 29th October 1870, No. 4445.

In reply to your No. 880, dated 21st September 1870, I am directed to remark that attestations of Powers of Attorney and such like documents made by Deputy Commissioners are made by them not as Notaries Public but merely as Magistrates or Judges.

2. The law does not require these officers to make such attestations, nor attach any peculiar efficacy to them, as compared with attestations by private witnesses. But, if such attestations are desired, there can be no objection to their being made, or to the levy, under executive orders, of a fee for the service performed. The fee might be fixed at the rate hitherto in force, and there appears no objection to its realization by stamps. Any fees so levied should certainly be credited as Stamp revenue.

ORDER.—Ordered that copies of the foregoing letter be forwarded to the other local Governments, the local Administrations, the Comptroller-General of Accounts, the Accountants-General, and the Deputy Accountants-General, in independent charge.

(Signed) R. H. HOLLINGBERY,
Asst. Secy. to the Govt. of India.

Order thereon, 11th November 1870, No. 1752.

Communicated to the Board of Revenue.

(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Government.

SEASON REPORT.

REMARKS ON THE SEASON.

NORTHERN SECTION.—The rains all over this section were exceedingly good and plentiful.

Ganjam.—All the reservoirs in Ganjam received full supplies, and ryots were enabled to complete the transplantation of *paddy*. Standing crops were in good condition. *Gingelly*, early *paddy* and *raggy*, were cut; but the yield of the two former was not quite satisfactory, owing to the absence of timely rains.

Vizagapatam.—In Vizagapatam the transplantation of *paddy* and the harvesting of *cumboo, korralu, gingelly, ooddooloo*, and *raggy*, were brought to a close.

Godavery.—The Godavery and Yeleru rivers were in fresh, anicut channels were in full flow, and tanks held abundant supplies. Transplantation of *paddy* under the last source of irrigation was fast progressing, and elsewhere had been completed. The rains proved exceedingly beneficial to the standing crops, and all of them were in a flourishing condition. The cultivation of *cotton, tobacco, chillies*, and some of the dry grains was progressing.

Kistna.—In parts of the Kistna District the heavy rains impeded the tillage of fields which had been reserved for sowing the later grains, and proved detrimental to the standing wet and *pedda jonna* crops. The transplantation of wet crops had considerably advanced in the Delta taluks, and some attention was bestowed on the cultivation of *cotton* and *castor-oil seeds*. The early crops, *sujja, mokka-jonna, gidda-jonna*, and *korra*, were being harvested.

Nellore.—*Iswara korra* and some of the dry grains were generally cultivated in Nellore. The standing crops were thriving. *Karu kesari, sujja, gingelly seed, indigo*, and *korra* were cut throughout the ditrict.

Prices were almost stationary in Ganjam, Godavery, and Nellore. They fell slightly in Vizagapatam and Kistna.

There was no cholera in Vizagapatam. Its prevalence in the other districts was very limited. Fever and small-pox were in existence; but, except in the Kistna and Nellore Districts, were not attended with any serious mortality.

Cattle slightly suffered from disease, except in Vizagapatam. Pasture was abundant everywhere.

CEDED DISTRICTS.—The rainfall was general in Cuddapah, and abundant in Kurnool.

In Bellary it was both partial and scanty.

Cuddapah.—Some of the tanks in this district received good supplies. Dry grains and *paddy* were largely cultivated, and the standing crops, except in Royachoty, where blight had slightly injured them, were in good condition. *Chennangy paddy, indigo*, and a few dry grains were harvested, and the outturn was about three-fourths of a full yield.

Bellary.—The Toombadra river, in Bellary, was reported to be in fresh; tanks, however, received only scanty supplies. *Horse gram, cotton, korra*, &c., were planted, and the early *cholum* and *kartick paddy* crops were harvested.

Kurnool.—Tanks, except in the Markapur Taluk of the Kurnool District, received full supplies. The usual dry grains and *paddy* were cultivated, and, in the taluks of Koilkuntla and Sirwell, *korra* and *sujja* were harvested.

The prices of staple grains were declining in Cuddapah. In Bellary and Kurnool they remained almost stationary.

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There was no cholera in this section, and the slight prevalence of fever and small-pox was confined to parts of Cuddapah and Kurnool.

Cattle disease was in existence; but its spread was partially checked by the adoption of Dr. Thacker's treatment.

East Centre.—The rainfall was general in Chingleput and South Arcot, and partial in North Arcot.

Chingleput.—In Chingleput, *paddy* of different kinds, and *cumboo, varagoo,* and *cholum* were cultivated. The standing crops in parts of the Trivellore Taluk were submerged by the heavy rains and completely destroyed; elsewhere they were in good condition.

North Arcot.—Tanks generally received good supplies. *Paddy, ground-nuts, chillies,* and some of the dry grains were sown. The standing crops were doing as well as could be desired. *Sajjaloo, raggy, gingelly, cholum,* and *paddy* were harvested, and yielded fair average crops.

South Arcot.—The largest supplies received by river-fed tanks would last for four months, and those received by rain-fed tanks would last for two months. The cultivation of *samba paddy* and the dry grains was in active progress, and the *carr* crop, *cumboo, raggy, indigo,* and *gingelly-oil seeds* were being harvested.

There was a perceptible fall in the prices in Chingleput and North Arcot. In South Arcot they were fluctuating.

There were twenty-eight deaths from cholera, and six from fever and ague in North Arcot.

Chingleput and South Arcot were not quite free from these diseases; but, on the whole, preserved good health.

More than 300 head of cattle died from disease in North Arcot, and the state of their health in the other districts also was far from good.

Cauvery.—Rains during the latter half of the month were scanty, and particularly so in the Tanjore District.

Tanjore.—Over the greater portion of the Tanjore District the cultivation of *samba peshanam* and the dry grains was vigorously pushed on. The standing crops, however, were drooping in some localities, owing to the inadequate rainfall. *Kaduppu kar, kuruvai,* and other inferior sorts of *paddy,* and the dry grains, *cumboo, cholum, &c.,* were being harvested.

Trichinopoly.—In Trichinopoly, irrigating channels were full, and tanks held moderate supplies. The same grains as in Tanjore were under cultivation. *Kar* and *samba paddy, cumboo,* and *raggy* were being harvested. The condition of the standing crops was good.

Prices fell, and there were indications of a further fall in Tanjore.

Public health was, on the whole, good.

Cattle were free from disease.

Southern Section.—There was but a scanty fall of rain in this section.

Madura.—The transplantation of *paddy* and the cultivation of *raggy, cumboo,* and other cereals were progressing. The early *cumboo, gingelly-oil seed,* and *raggy* crops were being harvested. *Cotton* and *indigo* plants were thriving.

Tinnevelly.—The usual freshes were received in the Tambrapurni river. *Peshanam,* or second-crop cultivation under rain-fed tanks, was progressing, and wet lands in other localities were being ploughed. *Cumboo, samai,* and *raggy* were sown on dry lands.

Prices were stationary.

Cholera was abating and public health was good.

Cattle were healthy, though pasture was not sufficiently plentiful in parts of the Madura District.

West Centre.—The rainfall was slight in Coimbatore and tolerably good in Salem.

Coimbatore.—In Coimbatore ryots were engaged in the cultivation of *tobacco, cholum, horse gram,* and other grains. The standing *nunjah* and garden crops were thriving, but some of the dry crops had suffered from insufficiency of rain. *Rape seed, cumboo,* &c., were harvested,

Neilgherries.—On the Neilgherries, *korally, samai, raggy, keeray, potatoes,* and *coffee* were in good condition. *Ganjay* and *wheat* had already been reaped.

Salem.—Tanks in Salem were well supplied. The progress made in wet and dry cultivation and the condition of the standing crops generally were satisfactory. *Indigo* was not largely cultivated, and only a small quantity of *cotton* was picked. *Car paddy* and the early dry crops were harvested.

There was a slight fall in the prices in Coimbatore and on the Neilgherries. In Salem they slightly fluctuated in the prospect of a demand for exportation.

In Coimbatore and Salem, fever and cholera were prevalent, and there were some casualties from the latter cause. The sanitary condition of the Neilgherries was good.

The health of cattle was, on the whole, good.

West.—The rainfall was deficient during the first half of the month in South Canara, but was made up for by the heavy showers during the latter half. In Malabar the fall was favourable.

South Canara.—The first-crop rice had been harvested, and preparations were being made for the cultivation of the second crop.

Malabar.—In Malabar the sowing of the second or *Magaram* crop was still in progress.

Prices fell in South Canara and remained stationary in Malabar.

Public health was slightly affected by cholera, fever, and small-pox.

Cattle were not free from disease in South Canara.

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Average Bazaar Prices of Grain and Salt per Madras Garce, and Rain Report of all the Districts of the Madras Presidency, for the Month of September 1870, *Fusly* 1280.

DISTRICTS.		Prices of Grain and Sea Salt. 2nd sort Rice. Fusly 1279	2nd sort Rice. Fusly 1280	2nd sort Paddy. Fusly 1279	2nd sort Paddy. Fusly 1280	Cholum. Fusly 1279	Cholum. Fusly 1280	Raggy. Fusly 1279	Raggy. Fusly 1280	Horse Gram. Fusly 1279	Horse Gram. Fusly 1280	Sea Salt. Fusly 1279	Sea Salt. Fusly 1280	Rainfall. Northern Section.	Southern Section.	Eastern Section.	Western Section.	Average.
		Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Ins.	Ins.	Ins.	Ins.	Ins.
Northern Section.	Ganjam	326	273	131	110	191	156	161	135	262	197	282	316	12·50	8·40	9·20	10·50	10·15
	Vizagapatam	407	288	172	120	198	165	187	150	238	18[illegible]	280	312	8·40	10·70	14·10	11·10	11·07
	Godavery	293	235	136	106	160	130	156	124	219	168	250	266	13·78	10·99	11·54	10·42	11·68
	Kistna	367	330	163	146	181	192	165	160	261	197	291	346	11·70	7·30	9·60	8·20	9·20
	Nellore	362	310	174	147	155	202	138	160	245	219	262	314	9·24	4·59	10·77	2·38	6·74
Ceded Districts.	Cuddapah	418	409	192	184	189	202	173	176	213	229	317	364	......	......	......	......	......
	Bellary	363	343	148	158	118	239	100	143	156	190	378	479	2·74	2·87	2·13	1·79	2·38
	Kurnool	430	416	184	189	151	195	156	180	230	246	328	364	5·36	10·51	7·51	4·86	7·06
East Centre.	Madras	457	336	207	150	205	187	222	192	255	287	250	295	......	......	......	......	12·58
	Chingleput	468	363	219	162	283	230	236	197	304	255	267	299	6·68	4·45	7·21	5·75	6·02
	North Arcot	412	320	187	143	192	136	184	150	225	177	247	303	4·80	3·30	5·70	4·90	4·67
	South Arcot	444	291	202	126	232	140	223	126	257	183	278	330	4·72	2·47	2·57	4·15	3·47
Cauvery.	Tanjore	384	267	175	119	210	131	181	123	247	184	251	297	4·20	2·09	1·15	4·50	2·98
	Trichinopoly	400	300	190	137	198	136	195	128	238	168	292	321	5·00	4·45	2·70	3·95	4·02
Southern Section.	Madura	445	348	213	167	168	152	181	131	199	177	297	333	3·16	3·56	......	2·15	2·95
	Tinnevelly	451	421	209	194	227	226	213	197	229	236	287	353	1·93	2·40	0·71	1·20	1·56
West Centre.	Coimbatore	479	395	228	194	265	223	211	182	256	193	350	381	4·75	1·73	3·35	3·04	3·22
	Neilgherries	640	492	...	...	267	291	246	229	320	229	457	472	......	......	2·36	2·04	2·20
	Salem	406	306	179	187	201	146	177	122	202	140	302	348	6·08	10·72	7·71	7·44	7·99
West	South Canara	471	337	194	151	...	...	283	211	348	272	254	285	9·70	11·80	11·80	9·90	10·80
	Malabar	412	355	188	163	...	...	189	175	318	238	294	347	6·29	9·36	......	5·52	......

Statement of Cotton and Indigo Cultivation with their Market Prices for the Month of September 1870, *Fusly* 1280.

	DISTRICTS	Cotton. Fusly 1279. Extent.	Cotton. Fusly 1279. Assessment.	Cotton. Fusly 1280. Extent.	Cotton. Fusly 1280. Assessment.	Market rate of cleaned Cotton per Candy of 500 lbs.	Indigo. Fusly 1279. Extent.	Indigo. Fusly 1279. Assessment.	Indigo. Fusly 1280. Extent.	Indigo. Fusly 1280. Assessment.	Market rate of Cake Indigo per Maund of 25 lbs.
	1	2	3	4	5	6	7	8	9	10	11
		Acres.	Rs.	Acres.	Rs.	Rs.	Acres.	Rs.	Acres.	Rs.	Rs.
1	Ganjam	6,191	12,408	6,641	12,458	165	30	30	3	2	70
2	Vizagapatam	8,594	14,224	4,316	10,368	144	317	1,507	2,518	18,890	46
3	Godavery	760	1,664	171	596	145	1,061	3,187	525	1,432	56
4	Kistna	81,797	1,21,013	39,707	49,921	119	14,341	26,510	31,081	55,069	42
5	Nellore	9,283	9,244	9,762	10,327	152	33,685	79,264	43,216	91,043	43
6	Cuddapah	37,532	54,257	27,181	31,319	100 to 160	9,620	25,284	8,736	23,429	40 to 56
7	Bellary	3,27,257	3,49,223	2,34,946	2,46,395	115	8,181	13,640	6,256	9,902	63
8	Kurnool	2,10,087	2,37,621	1,05,638	1,18,978	122	44,820	84,628	57,241	1,04,524	45
9	Madras	......	......	......	......	140	......	......	......	......	40
10	Chingleput	....	......	....	......	......	2,916	9,355	7,576	19,575	...
11	North Arcot	1,071	2,094	1,468	3,176	115	4,899	11,243	11,106	21,923	44
12	South Arcot	937	1,772	1,838	3,722	121	23,540	46,200	58,154	1,11,975	34
13	Tanjore	400	483	2,033	2,556	155	472	885	1,004	2,247	25
14	Trichinopoly	2,249	2,508	941	970	123	111	328	472	861	14
15	Madura	3,140	4,329	3,861	5,134	115	44	108	37	64	40
16	Tinnevelly	3,534	3,283	1,832	1,312	125	31	63	38	60	31
17	Coimbatore	46,623	40,508	57,161	48,589	124	......	......	......	......	30
18	Salem	7,577	10,806	6,518	9,582	192	1,282	6,071	1,663	9,644	52
	Total...	7,47,032	8,65,437	5,04,014	5,55,403	......	1,45,350	3,08,303	2,29,626	4,70,640	...

Revenue Board Office,
Madras, 22nd October 1870.

(Signed) J. GROSE,
Acting Secretary.

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CIRCULAR ORDER OF THE BOARD OF REVENUE.

No. 6121.

Certificates of Sale under Act II of 1864 exempt from Stamp Duty.

Proceedings of the Board of Revenue, dated 14th October 1870.

Read the following letter from the Honourable D. ARBUTHNOTT, Collector of Madura, to the Acting Secretary to the Board of Revenue, dated 13th September 1870, No. 260:—

With reference to the Board's Standing Order, No. 274-1, I have the honour to observe that Certificates of Sale, issued under Section 38 of Madras Act II of 1864, appear to me to be instruments falling under Exemption 15 in Section 15 of the General Stamp Act No. XVIII of 1869, and to request the instructions of the Board whether such certificates can be issued on unstamped paper.

The Board concur with the Collector.

2. These Proceedings will be communicated to all Collectors, and Circular Order No. 19 of 1868 (274-1) will be cancelled.

(Signed) J. GROSE,
Acting Secretary.

ACTS OF THE GOVERNMENT OF INDIA.

The following Act of the Governor-General of India in Council received the assent of His Excellency the Governor-General on the 19th day of July 1870, and is hereby promulgated for general information:—

Act No. XXI of 1870.

An Act to regulate the Wills of Hindoos, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay.

Preamble.

Whereas it is expedient to provide rules for the execution, attestation, revocation, revival, interpretation, and probate of the wills of Hindoos, Jainas, Sikhs, and Buddhists in the territories subject to the Lieutenant-Governor of Bengal and in the towns of Madras and Bombay; It is hereby enacted as follows:—

Short Title.

1. This Act may be called, "The Hindoo Wills' Act, 1870."

Certain portions of Succession Act extended to wills of Hindoos, Jainas, Sikhs, and Buddhists.

2. The following portions of the Indian Succession Act, 1865, namely, Sections 46, 48, 49, 50, 51, 55, and 57 to 77, (both inclusive),

Sections 82, 83, 85, 88 to 103, (both inclusive),

Sections 106 to 177, (both inclusive),

Sections 179 to 189, (both inclusive.

Sections 191 to 199, (both inclusive),

so much of Parts XXX and XXXI, as relates to grants of probate and letters of administration with the will annexed, and

Parts XXXIII to XL (both inclusive), so far as they relate to an executor and an administrator with the will annexed,

shall, notwithstanding anything contained in Section 331 of the said Act, apply—

Extent of Act.

(a.) to all wills and codicils made by any Hindoo, Jaina, Sikh, or Buddhist, on or after the 1st day of September 1870, within the said territories of the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b.) to all such wills and codicils made outside those territories and limits, so far as relates to immoveable property situate within those territories or limits:

Provisos.

3. Provided that marriage shall not revoke any such will or codicil:

and that nothing herein contained shall authorize a testator to bequeath property which he could not have alienated *inter vivos*, or to deprive any persons of any right of maintenance of which, but for Section 2 of this Act, he could not deprive them by will:

and that nothing herein contained shall vest in the executor or administrator with the will annexed of a deceased person, any property which such person could not have alienated *inter vivos:*

and that nothing herein contained shall affect any law of adoption or intestate succession:

and that nothing herein contained shall authorize any Hindoo, Jaina, Sikh, or Buddhist to create in property any interest which he could not have created before the 1st day of September 1870.

Partial repeal of Bengal Regulation V of 1799, Section 2.

4. On and from that day, Section 2 of Bengal Regulation V of 1799 shall be repealed so far as relates to the executors of persons who are not Mahomedans, but are subject to the jurisdiction of a District Court in the territories subject to the Lieutenant-Governor of Bengal.

Saving of rights of Administrator-General.

5. Nothing contained in this Act shall affect the rights, duties, and privileges of the Administrators-General of Bengal, Madras, and Bombay respectively.

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6. In this Act, and in the said sections and Parts of the Indian Succession Act, all words defined in Section 3 of the same Act shall, unless there be something repugnant in the subject or context, be deemed to have the same meaning as the said Section 3 has attached to such words respectively:

Interpretation clause.

and in applying Sections 62, 63, 92, 96, 98, 99, 100, 101, 102, 103, and 182 of the said Succession Act to wills and codicils made under this Act, the words "son," "sons," "child," and "children," shall be deemed to include an adopted child; and the word "grandchildren" shall be deemed to include the children, whether adopted or natural-born, of a child whether adopted or natural-born; and the expression "daughter-in-law" shall be deemed to include the wife of an adopted son:

and in making grants under this Act of letters of administration with the will annexed, or with a copy of the will annexed, Section 195 of the said Succession Act shall be construed as if the words "and in case the Hindu Wills' Act had not been passed" were added thereto; and Section 198 of the said Succession Act shall be construed as if, after the word "intestate," the words "and the Hindoo Wills' Act had not been passed" were inserted; and Sections 230 and 231 of the said Succession Act shall be construed as if the words "if the Hindu Wills' Act had not been passed" were added thereto, respectively.

(Signed) WHITLEY STOKES,

Secy. to the Council of the Govr.-Genl. for making Laws and Regulations.

Re-published by order of His Excellency the Governor in Council.

(Signed) R. S. ELLIS,

Chief Secretary.

The following Act of the Governor-General of India in Council received the assent of His Excellency the Governor-General on the 30th August 1870, and is hereby promulgated for general information:—

Act No. XXII of 1870.

An Act to confirm certain laws affecting European British Subjects.

Whereas the Governors of the Presidencies of Fort St. George and Bombay in Council, and the Lieutenant-Governor of Bengal in Council, have severally passed divers Acts purporting to apply generally to all persons within the local extent of the said Acts; and whereas doubts have been raised as to the validity of such Acts, in so far as they affect to render European British subjects liable to be convicted and punished by tribunals other than the High Courts of Judicature at Fort William, Madras, and Bombay; and whereas doubts have also been raised as to the application to European British subjects of certain Acts of the Governor-General in Council: For the purpose of removing such doubts it is hereby enacted as follows:—

Preamble.

1. Every such Act passed by the Governor of the Presidency of Madras in Council, or by the Governor of the Presidency of Bombay in Council, or by the Lieutenant-Governor of Bengal in Council, shall, so far as regards the liability of European British subjects to be convicted and punished thereunder, be and be deemed to have been as valid as if it had been passed by the Governor-General of India in Council at a meeting for the purpose of making Laws and Regulations.

Confirmation of local Acts so far as regards European British subjects.

2. Unless there be something repugnant in the context, all Acts heretofore or hereafter passed by the Governor-General in Council, which confer summary jurisdiction over offences, shall be deemed to apply to European British subjects, although such persons be not expressly referred to therein.

Acts conferring summary jurisdiction over offences to apply to European British subjects.

3. Act No. XVIII of 1859 *(to amend the law relating to offences declared to be punishable on conviction before a Magistrate)* shall be construed as if, in Sections 1, 2, and 4, after the word "heretofore" the words "or hereafter" were

Amendment of Act No. XVIII. of 1859, Sections 1, 2, and 4.

4. Nothing in this Act shall be taken to authorize a Magistrate to exceed the limits of his ordinary jurisdiction as to the amount of punishment which he may inflict, or to confer jurisdiction on any Magistrate not being a Justice of the Peace.

Saving of limits of Magistrates ordinary jurisdiction.

5. All Magistrates and other persons are hereby indemnified for anything done before the passing of this Act which might lawfully have been done if this Act had been then in force, and no suit or other proceeding shall be maintained against any such Magistrate or other person in respect of anything so done.

Indemnity clause.

(Signed) WHITLEY STOKES,

Secy. to the Council of the Govr.-Genl. for making Laws and Regulations.

Re-published by order of His Excellency the Governor in Council.

(Signed) R. S. ELLIS,

Chief Secretary.

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